

EXHIBIT AAA

Jose Ponce Deposition

Page 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
) Civil Action No.)
Plaintiff,) 4:18-cv-00644

v.)

CITY OF HOUSTON,)

Defendant.)

JANE DRAYCOTT AND PAULA KEYES,)

Plaintiff-Intervenors,)

v.)

CITY OF HOUSTON,)

Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF
JOSE PONCE
DECEMBER 11, 2018

ORAL AND VIDEOTAPED DEPOSITION OF JOSE PONCE,

produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on the 11th day of December, 2018, from
10:42 a.m. to 1:31 p.m., before Julie Scarborough, CSR
in and for the State of Texas, reported by method of
machine shorthand, at the City of Houston Legal
Department, 900 Bagby Street, 3rd Floor, Houston, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

Page 2

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Videographer - Mr. Steve Green

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Page 3

INDEX

PAGE

Appearances	2
JOSE PONCE	
Examination by Mr. Monteiro	4
Examination by Mr. Ahmad	91, 106
Examination by Ms. Sullivan	102
Signature and changes	108
Reporter's Certificate	110

EXHIBITS

NO.	DESCRIPTION	PAGE
Exhibit 1	(Confidential) Houston Fire Department Classified Employee Performance Evaluation for Ms. Draycott 4-28-07 through 8-14-07 (HOU00002711-2714)	34
Exhibit 2	(Confidential) City of Houston Office of the Inspector General 48-Hour Notification for Mr. Jose Ponce, 10-18-09 (HOU00006173-6174)	59
Exhibit 3	(Confidential) Sworn Affidavit of Jose Ponce, 11-3-09 (HOU00006169-6172)	64
Exhibit 4	(Confidential) Statement of HFD Senior Captain Jose R. Ponce, 7-8-09 (HOU00000814-818)	83

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(Please note quotation marks within the transcript do
not necessarily denote an exact quote from documents.)

Page 4

THE VIDEOGRAPHER: The date is December the
11th, 2018. The time is approximately 10:42 a.m. We're
on the record.

(Witness sworn.)

JOSE PONCE,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MONTEIRO:

Q. Morning, sir.

A. Morning.

Q. My name is Jeremy Monteiro. I'm an attorney for
the Department of Justice, and I'll be taking your
deposition this morning.

A. Okay.

Q. Just to note for the record, this deposition was
noticed for -- by the United States at 9:00 -- for 9:00
a.m. this morning. We're just getting started now.

Sir, would you please provide your home address
and phone number?

A. Home is 16302 North Trail, Houston, Texas 77073.

My phone number is (281) 782-9896.

Q. And I'm sorry. I didn't catch the -- the
spelling of the street name.

A. North Trail, T-r-a-i-l --

Q. Trail.

<p style="text-align: right;">Page 5</p> <p>1 A. -- and -- and Drive.</p> <p>2 Q. Thank you. Mr. Ponce, I'm just going to explain</p> <p>3 to you how the deposition works today so we're all on</p> <p>4 the same page as to how we'll proceed today. There's a</p> <p>5 videographer here at the end of the table who's</p> <p>6 videotaping this deposition, and then you also have a</p> <p>7 court reporter to your right who's taking down</p> <p>8 everything you say. So if you don't understand any of</p> <p>9 my questions, please let me know; and I'll do my best to</p> <p>10 restate them.</p> <p>11 A. Okay.</p> <p>12 Q. Is that okay? And if you don't hear my question,</p> <p>13 let me know; and I'll -- I'll repeat it or restate it as</p> <p>14 well.</p> <p>15 A. Okay.</p> <p>16 Q. To ensure that we have a clean transcript, please</p> <p>17 wait until I finish my question before you answer so the</p> <p>18 court reporter can take down what both of us are saying.</p> <p>19 A. Okay.</p> <p>20 Q. Is that okay? And then you also need to</p> <p>21 answer -- answer my questions verbally because the court</p> <p>22 reporter can't take down a nod of your head or</p> <p>23 something -- or other body language.</p> <p>24 A. Okay.</p> <p>25 Q. Unless the City -- City's attorney instructs you</p>	<p style="text-align: right;">Page 7</p> <p>1 "the attorneys," you pointed to Ms. Sullivan. Was there</p> <p>2 anyone else --</p> <p>3 A. No.</p> <p>4 Q. -- present?</p> <p>5 A. No.</p> <p>6 Q. And when was your meeting?</p> <p>7 A. I don't remember. It was a -- a few days ago.</p> <p>8 Q. Okay. How long was your meeting?</p> <p>9 A. I want to say 30, 45 minutes.</p> <p>10 Q. Did you review any documents during that meeting?</p> <p>11 A. Just my statements that I gave.</p> <p>12 Q. Are those your -- are you referring to your OIG</p> <p>13 statements?</p> <p>14 A. Yes.</p> <p>15 Q. How many statements were there?</p> <p>16 A. Just one.</p> <p>17 MS. SULLIVAN: Put your hands down.</p> <p>18 THE WITNESS: Oh.</p> <p>19 Q. (BY MR. MONTEIRO) Any other documents that you</p> <p>20 reviewed?</p> <p>21 A. No.</p> <p>22 Q. And apart from talking with Ms. Sullivan, did you</p> <p>23 speak with anyone else about your deposition?</p> <p>24 A. No.</p> <p>25 Q. Have you spoken with any employees of the Houston</p>
<p style="text-align: right;">Page 6</p> <p>1 not to answer a question, please answer all the</p> <p>2 questions today.</p> <p>3 A. Okay.</p> <p>4 Q. You understand that?</p> <p>5 A. Okay. Yes.</p> <p>6 Q. And if you need a break at any point, you can let</p> <p>7 us know; and we'll do our best to accommodate you. The</p> <p>8 only thing I ask is if there's a question pending, that</p> <p>9 you answer my question before we take a break.</p> <p>10 A. Okay.</p> <p>11 Q. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. And you are under oath. Do you understand what</p> <p>14 testifying truthfully means?</p> <p>15 A. Yes.</p> <p>16 Q. And is there anything or any reason why you</p> <p>17 couldn't testify truthfully today?</p> <p>18 A. No.</p> <p>19 Q. Thank you. What did you do, if anything, to</p> <p>20 prepare for your deposition today?</p> <p>21 A. I just met with the attorney just to kind of</p> <p>22 pretty much, you know, lay out the rules for what was</p> <p>23 going to happen today.</p> <p>24 Q. And I don't want you to go into your specific</p> <p>25 communications with the attorneys. But when you said</p>	<p style="text-align: right;">Page 8</p> <p>1 Fire Department about their depositions?</p> <p>2 A. No.</p> <p>3 Q. And are you represented today by an attorney?</p> <p>4 A. The City. The City.</p> <p>5 Q. You understand you're represented by the City's</p> <p>6 attorney?</p> <p>7 A. Yes.</p> <p>8 Q. Thank you. Are you currently employed with the</p> <p>9 Houston Fire Department?</p> <p>10 A. No.</p> <p>11 Q. When were you last employed with the fire</p> <p>12 department?</p> <p>13 A. About 14 months ago.</p> <p>14 Q. So that would have been the fall of 2017</p> <p>15 approximately?</p> <p>16 A. Yes, September 1st. That was my retirement date,</p> <p>17 September the 1st.</p> <p>18 Q. You retired September 1st, 2017?</p> <p>19 A. Yes, yes.</p> <p>20 Q. Did you retire with a -- a pension?</p> <p>21 A. Yes.</p> <p>22 Q. How long were you employed with the City of</p> <p>23 Houston?</p> <p>24 A. 36 years.</p> <p>25 MR. WYATT: How long was that?</p>

Page 9	Page 11
<p>1 THE WITNESS: 35-and-a-half, almost 36</p> <p>2 years. 35 years and 8 months, something like that.</p> <p>3 Q. (BY MR. MONTEIRO) What was the last position</p> <p>4 that you held with the Houston Fire Department --</p> <p>5 A. Senior --</p> <p>6 Q. -- prior to your retirement?</p> <p>7 A. Senior captain.</p> <p>8 Q. What -- and what station were you assigned to?</p> <p>9 A. I was assigned to Station 54.</p> <p>10 Q. When did you first begin working at Station 54?</p> <p>11 A. I think I was there, like, 16 years. 2000 -- oh,</p> <p>12 2001/2002.</p> <p>13 Q. And were you there approximately 16 years</p> <p>14 continuously?</p> <p>15 A. Yes.</p> <p>16 Q. So you worked there from approximately 2002</p> <p>17 through 2017?</p> <p>18 A. Yes.</p> <p>19 Q. Did you hold any other positions besides senior</p> <p>20 captain while you were assigned to Station 54?</p> <p>21 A. No.</p> <p>22 Q. Prior to being assigned to Station 54, where were</p> <p>23 you assigned?</p> <p>24 A. I was at Station 43.</p> <p>25 Q. How long did you work at Station 43?</p>	<p>1 Station 54. You said you worked on the B Shift. Were</p> <p>2 there any other shifts that you worked on during your</p> <p>3 employment?</p> <p>4 A. Well, we did overtime on A Shift, C Shift, and</p> <p>5 D Shift. I'm pretty sure I worked on all four.</p> <p>6 Q. As a senior captain, were you working all four?</p> <p>7 A. Yes, uh-huh.</p> <p>8 Q. How often would you do overtime on another shift?</p> <p>9 A. I would say maybe once a month or so.</p> <p>10 Q. Does that mean you would work --</p> <p>11 A. Not -- not -- not for all 17 years, you know, on</p> <p>12 and off.</p> <p>13 Q. Sure. I understand.</p> <p>14 A. Yeah.</p> <p>15 Q. Does that mean you would work -- you would be the</p> <p>16 senior captain on one other shift approximately once a</p> <p>17 month?</p> <p>18 A. I guess we can say that. I mean, you -- like I</p> <p>19 say, I could work one month and go, like, four months</p> <p>20 without no overtime. And then all of a sudden, I might</p> <p>21 work again. And I might work again the following week.</p> <p>22 It's just -- I'm just saying -- I'm just rounding it to</p> <p>23 once a month because I did work all three, four shifts.</p> <p>24 Q. Okay. I understand you're estimating --</p> <p>25 approximating and estimating. So --</p>
Page 10	Page 12
<p>1 A. Approximately -- probably about nine months or</p> <p>2 ten months, I would say.</p> <p>3 Q. What was your title at Station 43?</p> <p>4 A. Captain.</p> <p>5 Q. Captain. And prior to your assignment at</p> <p>6 Station 43, where were you assigned?</p> <p>7 A. Station 73.</p> <p>8 Q. Were you a captain at Station 73?</p> <p>9 A. Yes.</p> <p>10 Q. And how long were you assigned to Station 73?</p> <p>11 A. Approximately -- I want to say 12 years, maybe</p> <p>12 13.</p> <p>13 Q. Am I right that neither Station 43 or Station 73</p> <p>14 are what you refer to as ARFF stations?</p> <p>15 A. No.</p> <p>16 Q. They were doing suppression?</p> <p>17 A. They do suppression.</p> <p>18 Q. Let me back up for one minute. You said you were</p> <p>19 assigned to Station 54. What shift did you work on?</p> <p>20 A. 54? B Shift.</p> <p>21 Q. Were you always assigned to the B Shift?</p> <p>22 A. Yes.</p> <p>23 Q. Were you ever assigned to Station 92?</p> <p>24 A. No.</p> <p>25 Q. Let's talk a bit about your assignment to</p>	<p>1 A. Yeah.</p> <p>2 Q. And did the -- did the 54 B Shift work specific</p> <p>3 days, or how -- how was your schedule?</p> <p>4 A. On 24, off 24.</p> <p>5 Q. Were -- were there specific days that you worked</p> <p>6 those 24 hours, or did it vary?</p> <p>7 A. Yeah, there's a schedule for the whole year that</p> <p>8 all four shifts, you know, work. The whole year is</p> <p>9 already set out to what days we're going to be working.</p> <p>10 Of course, there's a debit day that we do work on the</p> <p>11 sister shift, which is -- which is the D Shift.</p> <p>12 Q. And how often do you do a debit day?</p> <p>13 A. It's once a month.</p> <p>14 Q. So once a month you would be the -- serve as a</p> <p>15 senior captain on the 54 D Shift. Is that right?</p> <p>16 A. Yes. But majority of the times, I was taking off</p> <p>17 because they have a senior captain. I would be the</p> <p>18 extra senior captain on that shift because, you know,</p> <p>19 they have a senior captain on the D Shift. So I would</p> <p>20 take a holiday. It wasn't every month that I worked.</p> <p>21 Q. We talked a few minutes ago about the overtime</p> <p>22 shift you worked. That wasn't -- that's not limited to</p> <p>23 a specific shift, right?</p> <p>24 A. No, you can work on all four shifts. You know,</p> <p>25 sometimes I would get held over on the A Shift or the</p>

Page 13	Page 15
<p>1 C Shift.</p> <p>2 Q. Okay. And who was the senior captain on the</p> <p>3 D Shift that you just mentioned?</p> <p>4 A. Captain Holmes.</p> <p>5 Q. Is that Robert Holmes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 MS. SULLIVAN: And I'll just object to that</p> <p>9 question as vague as to time, but --</p> <p>10 Q. (BY MR. MONTEIRO) So when you were assigned to</p> <p>11 the 54 B Shift, who -- as a senior captain, who was your</p> <p>12 captain when you retired?</p> <p>13 A. Oh, when I retired, it was Captain Wurst.</p> <p>14 Q. I'm sorry. Can you say that again?</p> <p>15 A. Captain Wurst.</p> <p>16 Q. Captain Wurst. That's Thomas Wurst?</p> <p>17 A. Yes.</p> <p>18 Q. And how long had Captain Wurst been the captain</p> <p>19 on the 54 B Shift?</p> <p>20 A. Quite a few years. Like I said, my first captain</p> <p>21 was Captain Wisnoskie. And -- and then he transferred,</p> <p>22 and Captain Wurst took over. So it's -- we worked</p> <p>23 together for quite a few years. I don't know the exact</p> <p>24 number.</p> <p>25 Q. So you worked for some period -- captain -- you</p>	<p>1 Q. And you continued to report to him when he was</p> <p>2 deputy chief?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know how long you reported to</p> <p>5 Chief McAteer?</p> <p>6 A. Not -- not quite often; but, I mean, every once</p> <p>7 in a while, I would communicate with him.</p> <p>8 Q. I'm sorry. Let me clarify my question. Do you</p> <p>9 know how many -- how many years you were reporting to</p> <p>10 Chief McAteer?</p> <p>11 A. Oh, okay, yeah. Well, like I say, he was -- a</p> <p>12 few years. All I can say is quite a few years that --</p> <p>13 like I say, he was a district chief. And then he left,</p> <p>14 and Sangle took over. And then Deputy Chief McAteer</p> <p>15 came back. And so between district chief and deputy</p> <p>16 chief, it was quite a few years. I don't know exactly</p> <p>17 how many years.</p> <p>18 Q. Okay. Did you report to Chief McAteer</p> <p>19 continuously, or was there someone in between that you</p> <p>20 were reporting to?</p> <p>21 A. Repeat that again. Okay?</p> <p>22 Q. Sure. Did you report to Chief McAteer</p> <p>23 continuously, or was there someone who you reported to</p> <p>24 in between?</p> <p>25 A. Over --</p>
Page 14	Page 16
<p>1 worked for some period of time with Captain Wisnoskie on</p> <p>2 the --</p> <p>3 A. Yes, when I started my career.</p> <p>4 Q. Let me finish my question because she's taking --</p> <p>5 trying to take down what we both say. Let me start</p> <p>6 over.</p> <p>7 You worked with Captain Wisnoskie for a number of</p> <p>8 years on the B Shift, and then Captain Wisnoskie</p> <p>9 retired -- or, excuse me, Captain Wisnoskie was</p> <p>10 reassigned, and then Captain Wurst took over?</p> <p>11 A. Yes.</p> <p>12 Q. And do you have a -- do you know how long you --</p> <p>13 you worked with Captain Wisnoskie on the B Shift?</p> <p>14 A. Just a few years.</p> <p>15 Q. Who was -- who did you report to when you were</p> <p>16 senior captain on the 54 B Shift?</p> <p>17 A. There's been several chiefs throughout the</p> <p>18 department. I would say there's Tyner -- Chief Tyner,</p> <p>19 Chief Neal, Chief Sangle, Chief McAteer. Those were the</p> <p>20 ones throughout the 17 years that I was there.</p> <p>21 Q. So who is the most recent --</p> <p>22 A. Chief McAteer is the most recent one, yes.</p> <p>23 Q. And is he the district chief?</p> <p>24 A. He was a district chief, and then he ended up</p> <p>25 promoting to a deputy chief.</p>	<p>1 MS. SULLIVAN: Objection, vague.</p> <p>2 A. Yeah, I mean, over -- I mean, there's</p> <p>3 communication with Chief McAteer, and there's</p> <p>4 communications with -- between my captain, Junior</p> <p>5 Captain Wurst and -- and Chief McAteer.</p> <p>6 Q. (BY MR. MONTEIRO) Let me see if I can clarify my</p> <p>7 question.</p> <p>8 A. Okay.</p> <p>9 Q. I'm asking for your -- the -- the direct</p> <p>10 report -- your direct report we're talking about. And</p> <p>11 you told me that your -- your direct report was</p> <p>12 Chief McAteer?</p> <p>13 A. Yes. I mean, if -- yeah, he's higher up in the</p> <p>14 ranking. So if there's something that I needed to</p> <p>15 discuss with him, I would communicate with him.</p> <p>16 Q. Okay. And then I -- I previously asked you the</p> <p>17 number of years that you reported to Chief McAteer.</p> <p>18 A. And I said that -- quite a few years. I don't</p> <p>19 know the exact years. Like I say, he was the district</p> <p>20 chief. Then he came back as the deputy chief. So</p> <p>21 there's quite a few years in there.</p> <p>22 Q. Okay. Did you report to him continuously between</p> <p>23 the times that he was a district chief and a deputy</p> <p>24 chief?</p> <p>25 A. Continuously? You're saying every day or -- or</p>

<p style="text-align: right;">Page 17</p> <p>1 every once in a while or --</p> <p>2 Q. Just annually. Was -- was he your direct report</p> <p>3 for the entire time that he was the district chief and a</p> <p>4 deputy chief?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Thank you. Where -- strike that.</p> <p>7 Which office did District Chief McAteer work out</p> <p>8 of?</p> <p>9 MS. SULLIVAN: Objection, vague. Go ahead</p> <p>10 and answer.</p> <p>11 Q. (BY MR. MONTEIRO) And if it changed over the</p> <p>12 time frame, you can let me know.</p> <p>13 A. Right, it did. It did. I mean, you know, at one</p> <p>14 time he was quite a few years at Station 99. And</p> <p>15 then -- then they ended up giving him an office there in</p> <p>16 the terminal. Terminal A, I think that's where he</p> <p>17 was -- his office was at.</p> <p>18 Q. Okay. So at -- he was at Station 99 for some</p> <p>19 period of time?</p> <p>20 A. Yes.</p> <p>21 Q. And then he also worked at Station -- excuse</p> <p>22 me -- Terminal A?</p> <p>23 A. Yes.</p> <p>24 Q. And Terminal A is at the airport. Is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 emergencies.</p> <p>2 THE REPORTER: I'm sorry?</p> <p>3 THE WITNESS: Aircraft emergencies.</p> <p>4 Q. (BY MR. MONTEIRO) Anything else?</p> <p>5 A. That's pretty much it. I mean --</p> <p>6 Q. You said -- oh, go ahead.</p> <p>7 A. No. I mean, I guess handling the staffing with</p> <p>8 personnel and vacations, holidays, and things like that.</p> <p>9 Q. When you said you do -- your -- one of your</p> <p>10 responsibilities was staffing for all three stations,</p> <p>11 which stations are you referring to?</p> <p>12 A. Station 54, 92, and 99.</p> <p>13 Q. And so were -- were you the senior captain for 92</p> <p>14 and 99 also?</p> <p>15 A. Yes. I mean, I was Station 54, but I handled</p> <p>16 their staffing. You know, I was -- the senior captain</p> <p>17 was like a district chief at that time, you know,</p> <p>18 handling all three stations -- managing all three</p> <p>19 stations.</p> <p>20 Q. And what time period are you referring to?</p> <p>21 A. Well, the whole -- the whole 16 years I was</p> <p>22 there, 17.</p> <p>23 Q. Okay.</p> <p>24 A. Yes. And at one time it was Station 81 too at</p> <p>25 one time at the beginning of the career.</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. Is there an administrative office there, or what</p> <p>2 is that?</p> <p>3 A. Yes, for them, for the staff and him.</p> <p>4 Q. Command staff?</p> <p>5 A. Yes.</p> <p>6 Q. Is that what you mean?</p> <p>7 Were there any other offices that he worked out</p> <p>8 of while you reported to him that you're aware of?</p> <p>9 A. No.</p> <p>10 Q. And did you have -- did you have, like, standing</p> <p>11 meetings with Chief McAteer when -- when you reported to</p> <p>12 him, or how -- how often would you meet with him?</p> <p>13 MS. SULLIVAN: Objection, compound. Go</p> <p>14 ahead and answer.</p> <p>15 A. Well, we had meetings. It depends -- training,</p> <p>16 training meetings and -- throughout the years.</p> <p>17 Q. (BY MR. MONTEIRO) Did you have a standing</p> <p>18 meeting with him like once a week, once a month, or was</p> <p>19 it just more sporadic?</p> <p>20 A. Nothing set out. It's sporadic, yes.</p> <p>21 Q. So what were the responsibilities -- what were</p> <p>22 your responsibilities as a senior captain on the 54</p> <p>23 B Shift?</p> <p>24 A. Doing the staffing for the -- for the -- all</p> <p>25 three stations and handling the emergencies, aircraft</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay.</p> <p>2 A. The senior captain handled all three stations for</p> <p>3 their staffing. Of course, not the emergency Station</p> <p>4 81, but --</p> <p>5 Q. So there was no senior captain physically</p> <p>6 assigned to either 92 or 99?</p> <p>7 A. No.</p> <p>8 Q. How about captains? Were there captains assigned</p> <p>9 to 92 and 99?</p> <p>10 A. Yes.</p> <p>11 Q. Were the captains --</p> <p>12 A. And 54. And 54. So --</p> <p>13 Q. And 54.</p> <p>14 A. Yes.</p> <p>15 Q. Were -- were the captains assigned to 92 and 99</p> <p>16 the highest ranking HFD officer?</p> <p>17 A. Yes.</p> <p>18 Q. And you mentioned that you worked with</p> <p>19 Captain Wisnoskie and Captain Wurst on your shifts.</p> <p>20 What were their -- what were the -- what was the</p> <p>21 captain's responsibilities on your shift?</p> <p>22 A. For the captains?</p> <p>23 Q. Yes.</p> <p>24 A. Their responsibilities? Well, with the training.</p> <p>25 They took care of the training of the men. You know,</p>

<p style="text-align: right;">Page 21</p> <p>1 there's -- making emergencies. I mean, they -- they</p> <p>2 responded to emergencies and handled the incident also.</p> <p>3 They pretty much assigned duties to the station,</p> <p>4 assigned the personnel, you know, to their apparatuses</p> <p>5 or -- do the training.</p> <p>6 Q. So was the captain the direct supervisor of the</p> <p>7 engineer and the firefighters assigned to 54?</p> <p>8 A. I'm sorry. Repeat that again.</p> <p>9 Q. Was the captain the direct supervisor of the</p> <p>10 engineer and the firefighters assigned to --</p> <p>11 A. Yes.</p> <p>12 Q. -- 54?</p> <p>13 A. Yes, usually.</p> <p>14 Q. And I'm just going to remind you to try to let me</p> <p>15 finish my question so the court reporter can get that</p> <p>16 down before you answer.</p> <p>17 And how are the -- how are the -- we talked about</p> <p>18 the responsibilities between the senior captain and the</p> <p>19 captain. How are those responsibilities allocated?</p> <p>20 Who -- who -- who determines that?</p> <p>21 MS. SULLIVAN: Objection, vague. Go ahead.</p> <p>22 A. Who determines that? Well, those are the</p> <p>23 assigned duties for -- for those stations. I mean, when</p> <p>24 I showed up at ARFF, that's the way, you know, it was</p> <p>25 set up.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Actually it works that way, yes.</p> <p>2 Q. Did you as -- as a senior captain, did you have</p> <p>3 any responsibilities for your subordinates' performance</p> <p>4 evaluations?</p> <p>5 A. Yes.</p> <p>6 Q. What were -- what were your responsibilities?</p> <p>7 A. Well, actually that's -- that's the captain's</p> <p>8 responsibility, but I was -- had to review -- review</p> <p>9 and -- you know, the grading and the performance of what</p> <p>10 the captain had given them. And -- and I would agree or</p> <p>11 disagree.</p> <p>12 Q. Okay. So the captain prepares the performance</p> <p>13 evaluation?</p> <p>14 A. Yes.</p> <p>15 Q. And then as the senior captain, you review it?</p> <p>16 A. Yes.</p> <p>17 Q. And you could make -- you could propose changes</p> <p>18 if there was an issue -- if you had a concern with them?</p> <p>19 A. Yes.</p> <p>20 Q. Is there anyone else -- are you the highest level</p> <p>21 person who reviews the performance evaluation?</p> <p>22 A. No. It gets turned over to the chief.</p> <p>23 Q. The district chief?</p> <p>24 A. District chief. I think now it's the deputy</p> <p>25 chief. We have a deputy chief now.</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. (BY MR. MONTEIRO) That was the practice --</p> <p>2 A. Yes.</p> <p>3 Q. -- when you -- when you arrived at the station?</p> <p>4 A. Yes.</p> <p>5 Q. And how are the duties -- how are the captain's</p> <p>6 duties communicated to the captain?</p> <p>7 A. How are their duties communicated to the</p> <p>8 captains? By who?</p> <p>9 Q. Right, how -- who communicates the -- the</p> <p>10 captain's duties to the captain?</p> <p>11 A. Usually there's policies and -- and guidelines</p> <p>12 and -- and -- that -- there's an ARFF -- ARFF</p> <p>13 bulletin -- I mean, ARFF policies and procedures -- or</p> <p>14 guidelines they call them. They -- they go by it, you</p> <p>15 know. And then it's -- it's whatever comes up, you</p> <p>16 know, try to figure it out ourselves and -- and handle,</p> <p>17 you know, the issue, you know, the -- the</p> <p>18 responsibilities that need to be taken care of.</p> <p>19 Q. So you mentioned that there's policies and</p> <p>20 procedures that they would refer to; and then you</p> <p>21 mentioned that, "When something comes up, we would</p> <p>22 determine how to handle it."</p> <p>23 A. Well, concerning the duties around the station.</p> <p>24 Q. And is that -- would that be handled through the</p> <p>25 chain of command or -- or how would that be handled?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And what level -- do you know what level of</p> <p>2 review the district chief has over the performance</p> <p>3 evaluation?</p> <p>4 A. I believe, if I'm not mistaken -- I don't</p> <p>5 remember real well, but I think it does also go up to --</p> <p>6 downtown to an assistant chief. I don't remember that.</p> <p>7 Q. What is the district chief's level of review of</p> <p>8 the performance evaluation?</p> <p>9 A. He has to review it and sign it in a -- you know,</p> <p>10 make sure it's approved and send it back to us.</p> <p>11 Q. Okay. So am I right that the -- the captain</p> <p>12 prepares it, sends it to you, and then you send it to</p> <p>13 the district chief?</p> <p>14 A. Yes. Like I said, at that time it was the</p> <p>15 command chief. Now we have district chiefs over -- they</p> <p>16 took over. You know, they changed the -- the rankings</p> <p>17 there now.</p> <p>18 Q. We talked about the chain of command, and I just</p> <p>19 have a -- a couple of questions about how the</p> <p>20 supervisor/subordinate relationship works for you. So</p> <p>21 what would happen if one of your subordinates did not</p> <p>22 follow your orders?</p> <p>23 MS. SULLIVAN: Objection, vague. Go ahead.</p> <p>24 A. Well, are you talking at the station, at the</p> <p>25 fireground or -- you know, usually, like I say, there's</p>

<p style="text-align: right;">Page 25</p> <p>1 a chain of command, and the subordinate goes to the --</p> <p>2 the junior captain. The junior captain tries to handle</p> <p>3 that station. If he can't handle the station, then, of</p> <p>4 course, they'll bring it up to the senior captain. If</p> <p>5 the senior captain can't handle it, then it just gets</p> <p>6 passed up to the district chief.</p> <p>7 Q. (BY MR. MONTEIRO) Okay. So if you -- if you</p> <p>8 ordered your junior captain to do something at the</p> <p>9 station and he or she refused, would that -- would the</p> <p>10 junior captain be insubordinate?</p> <p>11 MS. SULLIVAN: Objection, vague, confusing.</p> <p>12 Go ahead and answer.</p> <p>13 A. No. Of course, you -- you will have a meeting</p> <p>14 with him and -- and coach him, coach him on -- on -- on</p> <p>15 the problem or -- or the situation, why things -- you</p> <p>16 know, you try to find things -- the reasons why, you</p> <p>17 know, he -- he didn't follow the order, maybe, you know,</p> <p>18 find a solution for him not -- for him to take care of</p> <p>19 the -- the situation. But it's basically, you know,</p> <p>20 you -- you coach him.</p> <p>21 Q. (BY MR. MONTEIRO) Okay. And if it continues to</p> <p>22 be a problem, as the senior captain could you recommend</p> <p>23 some sort of disciplinary action taken against the</p> <p>24 junior captain?</p> <p>25 A. Well, actually, you know, you -- you -- I guess</p>	<p style="text-align: right;">Page 27</p> <p>1 And -- and, I mean, when -- I know when you see the</p> <p>2 transfers, you know, the chief has, like, the ultimate</p> <p>3 decision on the rules and regulations, procedures.</p> <p>4 Q. So you talked about the Form 42 and -- and</p> <p>5 writing someone up. What's the next step of</p> <p>6 disciplinary action after the Form 42?</p> <p>7 A. There's -- there's another form, and it</p> <p>8 goes to -- it goes to -- I think it's 312. I think it's</p> <p>9 called 312, if I'm not mistaken. And that's a -- a</p> <p>10 little bit more detailed, you know, of the problem he's</p> <p>11 having and the solution they're going to -- you know,</p> <p>12 they're going to recommend and -- and then the outcome</p> <p>13 of it, you know. And you follow up on it.</p> <p>14 Q. And -- and who does the Form 312 go to?</p> <p>15 A. Well, it's to the subordinate.</p> <p>16 Q. Does it go --</p> <p>17 A. Oh, I'm -- to the chief.</p> <p>18 Q. The fire chief?</p> <p>19 A. No, no, the --</p> <p>20 Q. The district chief?</p> <p>21 A. -- district chief.</p> <p>22 Q. Okay. And is there -- are there any other forms</p> <p>23 in the disciplinary process?</p> <p>24 A. Those are the only ones that I -- that I</p> <p>25 remember.</p>
<p style="text-align: right;">Page 26</p> <p>1 they call it a Form 42. I mean, you -- you write them</p> <p>2 up. You write them up for -- that's, I think, the first</p> <p>3 form of him being disciplined.</p> <p>4 Q. That's -- that's the Form 42?</p> <p>5 A. Well, it used to be called Form 42. They changed</p> <p>6 the form now.</p> <p>7 Q. Okay. What's it referred to now, if you know?</p> <p>8 A. I just don't remember.</p> <p>9 Q. Does -- can the senior captain recommend</p> <p>10 termination?</p> <p>11 A. No.</p> <p>12 Q. Who -- who can recommend termination, if you</p> <p>13 know?</p> <p>14 A. I think that goes up -- up through the chain of</p> <p>15 command to the fire chief. The fire chief would</p> <p>16 probably be the -- the ultimate one that will decide to</p> <p>17 terminate his employment.</p> <p>18 Q. Do you know that, or is that -- do you know that</p> <p>19 for a fact, that the fire chief is the only one who can</p> <p>20 terminate employment?</p> <p>21 A. Not -- I -- like I said, I'm just -- I would say</p> <p>22 yes, yes.</p> <p>23 Q. Okay. How do you know that?</p> <p>24 A. Well, I think -- I'm sure that has to go all</p> <p>25 through the chain of command up to the fire chief.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Okay. So what would be the next step? If the</p> <p>2 Form 42 doesn't work and the Form 312 doesn't work, what</p> <p>3 would happen next?</p> <p>4 A. Well, that gets passed on, I think, to -- to the</p> <p>5 chief and -- and up the chain of command, uh-huh, to the</p> <p>6 assistant chiefs and --</p> <p>7 Q. Okay. Mr. Ponce, did you ever work with Jane</p> <p>8 Draycott?</p> <p>9 A. Yes.</p> <p>10 Q. When -- when did you work with her?</p> <p>11 A. I worked a few years with her. She was at</p> <p>12 Station 92 and on my shift quite a few years, and -- and</p> <p>13 then -- then she worked at 54 for maybe three, four</p> <p>14 months on my -- on my shift, yes.</p> <p>15 Q. Okay. So let me just unpack that. You said you</p> <p>16 worked with her at 92 -- 92?</p> <p>17 A. She was at Station 92 on the B Shift.</p> <p>18 Q. Okay. And is that the first shift that you ever</p> <p>19 worked with her on?</p> <p>20 A. Well, like I say, I was at Station 54; but since</p> <p>21 I managed all three stations, you know, that's why I'm</p> <p>22 referring to it. I was working on the same shift, but</p> <p>23 not at the same station. Now, like I said, she worked</p> <p>24 Station 54 for about three or four months on the</p> <p>25 B Shift.</p>

<p style="text-align: right;">Page 29</p> <p>1 Q. On the 54 B Shift?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And, I'm sorry, how long -- how long was</p> <p>4 she at 92 B?</p> <p>5 A. I'd say a few years. I don't remember how many</p> <p>6 years.</p> <p>7 Q. And were you the senior captain over her during</p> <p>8 that time?</p> <p>9 A. Yes.</p> <p>10 Q. And she was on the 54 B Shift for three to four</p> <p>11 months. Were there any other shifts or assignments that</p> <p>12 you worked with her on?</p> <p>13 A. Like I said, I've worked overtime on the A Shift</p> <p>14 or got held over on the A Shift and worked with her</p> <p>15 there.</p> <p>16 Q. That's at Station 54, right?</p> <p>17 A. Yes, on the A Shift.</p> <p>18 Q. Would she ever fill in on the B Shift after she</p> <p>19 left?</p> <p>20 A. After she left the B Shift?</p> <p>21 Q. Yeah. Would she ever fill in on B Shift?</p> <p>22 A. You know, I don't -- I don't remember if she took</p> <p>23 overtime or got held over or -- I mean, she didn't work</p> <p>24 much on -- on her shift after -- after she left the --</p> <p>25 the B Shift and went to the A Shift.</p>	<p style="text-align: right;">Page 31</p> <p>1 that needed to bring attention up to.</p> <p>2 Q. Okay. You didn't have any problems with her work</p> <p>3 performance?</p> <p>4 A. No. Listen, when you say "work performance," I</p> <p>5 just want to say, you know, the work performance around</p> <p>6 the station -- station. Around, like I say,</p> <p>7 emergencies, we hardly have emergencies. The majority</p> <p>8 of the time, like I said, the aircraft lands -- lands</p> <p>9 safely. We follow the aircraft to the gate, and -- and</p> <p>10 that's it. We come back to the fire station.</p> <p>11 As far as, like I said, I've seen her</p> <p>12 performing -- cutting or -- or extracting patients or</p> <p>13 things like that, I didn't get to see that; but I just</p> <p>14 got to see some of the station duties around the fire</p> <p>15 station physically.</p> <p>16 Q. Okay. So let me make sure I understand. You --</p> <p>17 you had the opportunity to observe Ms. Draycott perform</p> <p>18 the duties around the station?</p> <p>19 A. Yes.</p> <p>20 Q. And you didn't observe any problems with her work</p> <p>21 performance with respect to those duties. Is that</p> <p>22 right?</p> <p>23 A. Around the fire station.</p> <p>24 Q. Around the fire station.</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. So when -- during the time that</p> <p>2 Ms. Draycott was on your shift at 54 B, did you have the</p> <p>3 opportunity to observe her performing her duties as a</p> <p>4 firefighter?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever observe her on an emergency</p> <p>7 run or emergency response?</p> <p>8 A. I'm sure she -- we -- we responded to alerts</p> <p>9 because -- you know, at the time, not actually --</p> <p>10 actually physically seeing her, you know, because</p> <p>11 usually we stay on the -- in the trucks, you know, when</p> <p>12 we make alerts there at the airport. Unless it's</p> <p>13 something pretty bad, you know, yeah, they get out the</p> <p>14 trucks and they start performing some of their duties,</p> <p>15 but I didn't get to see that. I just got to respond</p> <p>16 with all the emergency apparatuses waiting for the</p> <p>17 arrival of the emergency aircraft.</p> <p>18 Q. And was she -- was she part of that response --</p> <p>19 A. I'm sure she was.</p> <p>20 Q. -- as a firefighter?</p> <p>21 A. I'm sure she was, yes.</p> <p>22 Q. Okay. So what -- what were your impressions of</p> <p>23 her work performance in those situations?</p> <p>24 A. Like I say, I didn't see anything different from</p> <p>25 any other of the guys. I mean, they -- nothing that --</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. And then in terms of responses to</p> <p>2 emergency alerts, do you remember ever having an</p> <p>3 opportunity to observe her responding to an emergency</p> <p>4 alert or something similar?</p> <p>5 A. Like I said, if she was on the truck, she</p> <p>6 responded. That's what I'm saying. And that what --</p> <p>7 you know, if the aircraft lands and nothing is wrong, we</p> <p>8 follow the aircraft to the gate, and then we -- we come</p> <p>9 back to the fire station. She's on the truck the whole</p> <p>10 time, you know. She don't get off.</p> <p>11 Now, what I'm saying is I never saw her, you</p> <p>12 know, we had an emergency where she needed to perform,</p> <p>13 you know, extrication or cutting or nothing like that,</p> <p>14 you know. But I -- like I say, she probably responded</p> <p>15 on the fire trucks, got -- you know, they get to their</p> <p>16 alert response points, and the aircraft lands. It's</p> <p>17 safe. They follow it to the gate, and they say, "Hey,</p> <p>18 go back to the station."</p> <p>19 Q. Okay. So let's talk about the alert responses</p> <p>20 that you just described.</p> <p>21 A. Okay.</p> <p>22 Q. There -- are there certain policies and</p> <p>23 procedures that need to be followed during the alert</p> <p>24 response?</p> <p>25 A. Oh, definitely, yes.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q. And did you ever see -- did you ever have</p> <p>2 any problems with how Ms. Draycott followed those</p> <p>3 policies and procedures in responding to the emergency</p> <p>4 alerts?</p> <p>5 A. Like I said, I have my own vehicle, my own</p> <p>6 command vehicle. The one that would be more familiar</p> <p>7 with that would be the -- the junior captain. The</p> <p>8 junior captain is the one that's on the fire truck, and</p> <p>9 that's where the firefighters are. So that's where --</p> <p>10 you know, he would have more direct contact on -- you</p> <p>11 know, with the -- the subordinates. I'm in my own</p> <p>12 vehicle with my own aide and trying to run the emergency</p> <p>13 scene. So -- so I really didn't get to see her, you</p> <p>14 know, physically.</p> <p>15 Q. Okay. Let me ask you this: Did your junior</p> <p>16 captain ever make you aware of any work-related concerns</p> <p>17 that he had with Ms. Draycott's performance?</p> <p>18 A. No.</p> <p>19 Q. And is that true for Captain Wisnoskie?</p> <p>20 A. I don't think Captain Wisnoskie worked with her.</p> <p>21 I don't think she was there yet.</p> <p>22 Q. So we're -- you're talking about Captain Wurst?</p> <p>23 A. Wurst, yes.</p> <p>24 Q. Thank you.</p> <p>25 A. And this is Station 54. Now, she was at</p>	<p style="text-align: right;">Page 35</p> <p>1 Exhibit 1?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you identify what this document is?</p> <p>4 A. It's a performance evaluation.</p> <p>5 Q. Who is it a performance evaluation for?</p> <p>6 A. For Draycott.</p> <p>7 Q. Jane Draycott?</p> <p>8 A. Yes.</p> <p>9 Q. And does reviewing Deposition Exhibit 1 help you</p> <p>10 refresh your memory in terms of whether you completed a</p> <p>11 performance evaluation for Ms. Draycott?</p> <p>12 A. I didn't complete the evaluation for Draycott.</p> <p>13 Captain Green did. I reviewed it.</p> <p>14 Q. Okay. So you reviewed and approved this</p> <p>15 performance evaluation for Ms. Draycott?</p> <p>16 A. Well, I -- I signed, yes, what he had graded her</p> <p>17 on her performance evaluation.</p> <p>18 Q. Okay. And let's look at the last page. Is</p> <p>19 that -- is that your signature under "Supervisor's</p> <p>20 Signature"?</p> <p>21 A. Yes.</p> <p>22 Q. And you signed this on November 28th, 2007 --</p> <p>23 A. Yes.</p> <p>24 Q. -- or you dated it on that day?</p> <p>25 A. Yes, that's the date, yeah.</p>
<p style="text-align: right;">Page 34</p> <p>1 Station 92 with Captain Green. You know, so that -- I</p> <p>2 mean, that, you know --</p> <p>3 Q. And do you have any recollection of Captain Green</p> <p>4 raising any concerns with you about Ms. Draycott's work</p> <p>5 performance?</p> <p>6 A. No.</p> <p>7 Q. Do you remember completing a performance</p> <p>8 evaluation for Ms. Draycott when she worked under your</p> <p>9 supervision?</p> <p>10 A. No.</p> <p>11 MR. MONTEIRO: Are we doing last names?</p> <p>12 MR. RUIZ: We're doing last name and exhibit</p> <p>13 number.</p> <p>14 MR. MONTEIRO: So that should be Ponce</p> <p>15 Exhibit 1, please.</p> <p>16 (Exhibit 1 marked.)</p> <p>17 Q. (BY MR. MONTEIRO) Mr. Ponce, I'm showing you</p> <p>18 what's been marked as Deposition Exhibit 1 for your</p> <p>19 deposition. If you could take a minute to review it,</p> <p>20 and let me know when you've had a chance to review it,</p> <p>21 please.</p> <p>22 A. Okay.</p> <p>23 Q. And for identification purposes, it bears the</p> <p>24 Bates Nos. HOU00002711 through HOU00002714.</p> <p>25 Have you had a chance to review Deposition</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. I'm sorry. You said Captain Green would have</p> <p>2 completed -- would have filled out the performance</p> <p>3 evaluation. Is that right?</p> <p>4 A. Yes, Captain Green performed it.</p> <p>5 Q. And at the time that you signed this performance</p> <p>6 evaluation, did you agree with Captain Green's ratings</p> <p>7 and comments?</p> <p>8 A. Like I say, he has direct supervision over her.</p> <p>9 So what he wrote, you know, yes. I mean -- I mean, I</p> <p>10 didn't agree, but I signed -- I signed the performance</p> <p>11 evaluation. When I'm saying I didn't agree, I'm just</p> <p>12 saying he wrote the comment of his -- her performance</p> <p>13 evaluation, and -- and -- and I -- you know, I said</p> <p>14 okay. You know, I signed it.</p> <p>15 Q. Okay. If there was anything in here that you</p> <p>16 didn't agree with, you would have let him know, right?</p> <p>17 A. Well, like I say, I don't have direct</p> <p>18 supervision, you know, over her. And I don't know what</p> <p>19 I'm -- he's the only one that's dealing with her.</p> <p>20 And -- and so, you know, he's telling me that's what's</p> <p>21 going on. You know, I believe him. You know, I trust</p> <p>22 him. And so I, you know, signed it.</p> <p>23 Q. Okay. So there wasn't anything -- strike that.</p> <p>24 None -- none of his ratings or comments were</p> <p>25 inconsistent with your firsthand knowledge of</p>

<p style="text-align: right;">Page 37</p> <p>1 Ms. Draycott's performance. Is that fair?</p> <p>2 A. Repeat that again.</p> <p>3 Q. Sure. None of Captain Green's ratings or</p> <p>4 comments were inconsistent with your firsthand knowledge</p> <p>5 of Ms. Draycott's performance?</p> <p>6 A. Like I said, I didn't have direct supervision</p> <p>7 over her. Captain Green is the one that was dealing</p> <p>8 with her on -- every day on all the training and issues</p> <p>9 that were going on at that station. I have no direct</p> <p>10 supervision over her. So I don't know if that answers</p> <p>11 your question or --</p> <p>12 Q. Not -- not really. Let me try again. We</p> <p>13 talked -- we talked a few minutes ago about your</p> <p>14 observation of some of Ms. Draycott's work performance,</p> <p>15 right?</p> <p>16 A. At Station 54, not at Station 92. This is</p> <p>17 Station 92. This is happening -- this performance</p> <p>18 evaluation was done at Station 92, but I'm saying at</p> <p>19 Station 54, yes --</p> <p>20 Q. Okay.</p> <p>21 A. -- because I had direct, you know, physically</p> <p>22 seeing her.</p> <p>23 Q. Okay. Let's back up for a minute then.</p> <p>24 A. Okay.</p> <p>25 Q. When -- when Ms. Draycott was assigned to</p>	<p style="text-align: right;">Page 39</p> <p>1 performance appraisal that was inconsistent with the</p> <p>2 firsthand knowledge that you had of Ms. Draycott's work</p> <p>3 performance?</p> <p>4 A. Repeat that again or make it a little bit more</p> <p>5 simple to me, you know, because --</p> <p>6 Q. I will try. I will try. You had some firsthand</p> <p>7 knowledge of Ms. Draycott's work performance, right, at</p> <p>8 92?</p> <p>9 A. No.</p> <p>10 Q. Well, you interacted with her.</p> <p>11 A. Yes, just for a visit. It was just a visit. I</p> <p>12 would, you know, go get the mail, pick up the mail and</p> <p>13 get off and just gather around the table and -- I would</p> <p>14 get the mail and -- and leave. It was just --</p> <p>15 Q. Okay. Is there anything in -- in the performance</p> <p>16 evaluation -- you've reviewed it today. Is there</p> <p>17 anything in the performance evaluation that you reviewed</p> <p>18 today that you disagree with?</p> <p>19 A. Like I'm saying again, you know, I'm just taking</p> <p>20 Captain Green's word because he's the direct supervisor</p> <p>21 over Draycott with all the training, all the work duties</p> <p>22 around the fire station. And -- like I said, and -- and</p> <p>23 if that's what he's saying that's going on, then, you</p> <p>24 know, I -- I believed him --</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 38</p> <p>1 Station 92, how were you made aware of her work</p> <p>2 performance as her senior captain?</p> <p>3 A. The only thing would be for Captain Green to call</p> <p>4 me at the fire station letting me know -- letting me</p> <p>5 know about her performance evaluation.</p> <p>6 Q. Do you have any recollection of Captain Green</p> <p>7 ever informing you of any performance issues with</p> <p>8 Ms. Draycott at Station 92?</p> <p>9 A. No.</p> <p>10 Q. And did you have -- is it your testimony that you</p> <p>11 had no interaction with Mrs. Draycott when she was at</p> <p>12 Station 92 B?</p> <p>13 A. I mean, I had interactions, yes.</p> <p>14 Q. Okay.</p> <p>15 A. You know, I'd go visit the fire stations. You</p> <p>16 know, I'd go to 99 and 92, get off the car, go inside,</p> <p>17 talk to the guys. And if she was around, yeah, I had</p> <p>18 interactions with her.</p> <p>19 Q. Okay. So based on those interactions that you</p> <p>20 had with her, you have some maybe minimal knowledge of</p> <p>21 her work performance, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So based on that -- based on your</p> <p>24 knowledge of -- of the work -- of her work performance,</p> <p>25 is there anything in the -- in Captain Green's</p>	<p style="text-align: right;">Page 40</p> <p>1 A. -- or I trusted him.</p> <p>2 Q. If -- if there was anything in the performance</p> <p>3 evaluation that you didn't agree with based on firsthand</p> <p>4 knowledge, you wouldn't have signed it, right?</p> <p>5 A. Right, yes, uh-huh, uh-huh.</p> <p>6 Q. Who was the reviewing officer for this</p> <p>7 performance evaluation?</p> <p>8 A. Chief McAteer. I know after -- and then -- yeah,</p> <p>9 Chief McAteer.</p> <p>10 Q. That's his signature, as far as you know?</p> <p>11 A. Yes, that's Chief McAteer's, the district chief,</p> <p>12 yes.</p> <p>13 Q. Let's go to the -- the first page of the</p> <p>14 document. The rating period is April 28th of 2007</p> <p>15 through August 14th of 2007?</p> <p>16 A. Yes.</p> <p>17 Q. What is the typical rating period for -- for a</p> <p>18 firefighter for their performance evaluation?</p> <p>19 A. Oh, it's a yearly.</p> <p>20 Q. So typically a firefighter would be rated on an</p> <p>21 annual basis?</p> <p>22 A. Yes, uh-huh.</p> <p>23 Q. And this says that it's an unscheduled rating.</p> <p>24 Do you know why -- or do you know what that means?</p> <p>25 A. Yes, it's specifically -- you know, it's -- it's</p>

<p style="text-align: right;">Page 41</p> <p>1 just -- it could be that she transferred. You know, it 2 could be a transfer and -- and they're, you know, 3 looking at her performance evaluation and -- and doing 4 one. 5 Q. Okay. Let's look at -- let's go to Page 4 under 6 the supervisor's comments. And it says, "The reason for 7 this unscheduled evaluation is because I transferred to 8 Station 99 D effective 8-14-2007." 9 Does that help refresh your memory in terms of 10 why she had an unscheduled performance evaluation in -- 11 at the end of 2007? 12 A. No. Like I said, I don't remember. The majority 13 of the time, you know, I -- I -- I get like 24 14 performance evaluations I -- I got to go over. And it's 15 quite a few years ago. So -- 16 Q. So the comment that I just read about -- it says, 17 "I transferred to Station 99 D," do you know if that's 18 Captain Green saying he -- he transferred to 99 D? 19 A. Well, "The reason for this unscheduled" -- oh, 20 yes, yes. It's Captain Green. 21 Q. Okay. Does that help refresh your memory in 22 terms of when he transferred to -- 23 A. Well, he -- he must have transferred there on -- 24 on 8-14-2007, you know, around that time. It's quite a 25 few years, you know. I mean --</p>	<p style="text-align: right;">Page 43</p> <p>1 performance evaluation, which is fireground operations, 2 the first rating. Do you see that? 3 A. Yes. 4 Q. What does that mean? What does fireground 5 operations mean? 6 A. It explains it there, you know, performs, you 7 know, forcible entry, rescue, fire extinguishment, 8 ladder raises. You know, it's just at the fireground. 9 So -- 10 Q. Excuse me. And it talks about air -- airport 11 rescue at the bottom of -- 12 A. Evacuations, multi-casualty incidents, foam, yes. 13 Q. What -- what are the airport -- airport rescues? 14 A. Airport rescue firefighting. 15 Q. Airport rescue firefighting? 16 A. Yes. 17 Q. And then it's described as evacuations, 18 multi-casualty incidents, foam firefighting? 19 A. Yes. 20 Q. And were those all -- would -- would all of these 21 duties under "Fireground Operations" have been 22 Ms. Draycott's duties in 2007? 23 A. Yes. 24 Q. And what was the rating that you approved for 25 Ms. Draycott for fireground operations?</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. I understand. 2 A. -- I'm having trouble remembering; but, yeah, 3 when I'm reading this, it's because he -- he did 4 transfer to Station 99. And so, yeah, I guess that 5 makes sense. You know, he -- he did his last 6 performance evaluation. Now, it's -- you know, that's 7 why they -- he did this performance evaluation on her. 8 Q. Does it mean he would have -- he would have 9 filled out the performance evaluation before he left? 10 A. Before or after, you know, it depends, you know. 11 I just don't know the date. I mean, it could be before 12 or after. 13 Q. Okay. But he was -- he was only rating 14 Ms. Draycott through August 14th of 2007, and then he 15 transferred thereafter? 16 A. I don't know if this is the date that he -- that 17 he transferred or the -- if -- see, "I transferred to 18 Station 99 D effective 8-14-2007." That's Captain Green 19 transferring to Station 99, from what I'm -- 20 Q. Okay. 21 A. -- I'm seeing here. 22 Q. Okay. So at that point he would -- he would no 23 longer be Ms. Draycott's supervisor? 24 A. Right. 25 Q. Okay. Let's talk about the first topic on the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Okay. That was approved by -- the rating by 2 Captain Green, the direct supervisor. He graded her a 3 3. 4 Q. And -- and did you approve the 3 by signing the 5 performance evaluation? 6 A. Yes. 7 Q. What does a 3 mean? 8 A. Performance is effective and consistently meets 9 established standards. 10 Q. And did you have any concerns about 11 Ms. Draycott's ability to perform fireground operations 12 as defined in this performance evaluation? 13 MS. SULLIVAN: Objection, asked and 14 answered. Go ahead and answer. Sorry. 15 A. I did not have -- have direct supervision over 16 her performance. I know this is, like, the third time, 17 you know. So I'm -- I'm assuming -- believing that 18 Captain Green, having the direct contact with her and 19 seeing her performance, that that was a correct 20 performance rating that he gave her. It was the right 21 one. 22 Q. (BY MR. MONTEIRO) Okay. It wasn't contrary to 23 anything that you knew in terms of Ms. Draycott's 24 performance? 25 A. No.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. And did -- strike that.</p> <p>2 Let's go to the next one. It says, "First</p> <p>3 Responder Functions & Responsibilities." What are</p> <p>4 those? What does that mean?</p> <p>5 A. Well, I mean, they -- they make emergencies with</p> <p>6 patients, you know, medical EMS responses to the</p> <p>7 terminal when they're on a -- especially if Station 92</p> <p>8 has a -- a medic unit there. I don't know if she was</p> <p>9 put on it and she responded to -- to emergencies at the</p> <p>10 terminal.</p> <p>11 Q. And that -- those -- that -- those duties would</p> <p>12 have been -- Ms. Draycott's duties would have been first</p> <p>13 responder functions in 2007?</p> <p>14 A. Yes.</p> <p>15 Q. And did Captain Green ever raise with you any</p> <p>16 concerns that he had about Ms. Draycott's ability to</p> <p>17 perform this function?</p> <p>18 A. No.</p> <p>19 Q. And did you observe any problems with</p> <p>20 Ms. Draycott performing this function?</p> <p>21 A. I'm going to say again I didn't never see any</p> <p>22 direct contact in an incident with her performance or</p> <p>23 jobs and -- you know, performance of her duties, you</p> <p>24 know, firefighting duties or EMS responses. I didn't</p> <p>25 have direct physically seeing her perform her job.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Have you had a chance to review the comments that</p> <p>2 I just referenced?</p> <p>3 A. On 4 on "Job & Technical Knowledge"? Yes, I -- I</p> <p>4 read that.</p> <p>5 Q. Okay. Do you have any -- so let's first focus on</p> <p>6 comments on Page 2.</p> <p>7 A. Okay.</p> <p>8 Q. Do you have any direct knowledge of -- or let me</p> <p>9 back up for a minute.</p> <p>10 Did you write these comments on Page 2?</p> <p>11 A. No.</p> <p>12 Q. Do you know who did?</p> <p>13 A. Well, it had to be Captain Green. He's -- yeah,</p> <p>14 he's the supervisor. Yeah, he's the one who did the</p> <p>15 performance evaluation, and there's his signature. It</p> <p>16 would be Captain Green.</p> <p>17 Q. Okay. Do you have any direct knowledge of what</p> <p>18 Captain Green was referencing under Section 4 where he</p> <p>19 says, "Draycott on" -- that Ms. Draycott on several</p> <p>20 occasions was unable to demonstrate job-related</p> <p>21 knowledge concepts and techniques related to her job as</p> <p>22 an ARFF?</p> <p>23 A. No. Like I said, it's just all the -- all the --</p> <p>24 what I just mentioned of all her duties and</p> <p>25 responsibilities that we have there. I'm just assuming</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. If we can flip to the next page of the</p> <p>2 performance evaluation, there's -- No. 4 says, "Job &</p> <p>3 Technical Knowledge." What does "Job & Technical</p> <p>4 Knowledge" mean on the performance evaluation we're</p> <p>5 looking at?</p> <p>6 A. What does it mean? Well, it is just</p> <p>7 the duties -- performance to the ARFF requirements,</p> <p>8 apparatuses, guidelines to responding to emergencies</p> <p>9 on -- on the runways, just the -- they make us know all</p> <p>10 the aircrafts, all the runways, taxiways. I mean, you</p> <p>11 name it. I mean, we could -- the navigational aids, the</p> <p>12 terminals, the gates, they -- it's just everything</p> <p>13 that's required of our job duties as an ARFF member.</p> <p>14 Q. Okay. And I want to direct your attention to the</p> <p>15 additional language under Section 4 under the heading</p> <p>16 "Reason for Rating and Performance Suggestions," if you</p> <p>17 can review that language. And then it also</p> <p>18 references -- it says, "See supervisor" -- I think it</p> <p>19 should be comments -- "below."</p> <p>20 A. Yes.</p> <p>21 Q. If you move ahead to the fourth page, there's</p> <p>22 some supervisor comments. If you could review those and</p> <p>23 let me know when you have had a chance to review those,</p> <p>24 I'll ask you a few questions about them.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 48</p> <p>1 that's what he's talking about.</p> <p>2 Q. Okay. My question is: Do you have any direct</p> <p>3 knowledge of what his concerns are here?</p> <p>4 A. And I'll repeat again it's -- it's -- it's the</p> <p>5 job-related problems that he's having.</p> <p>6 Q. Okay. So he says, "Draycott on several occasions</p> <p>7 was unable to demonstrate job related knowledge concepts</p> <p>8 and techniques related to her job as an ARFF."</p> <p>9 What do you know about those occasions on which</p> <p>10 he viewed Ms. Draycott unable to demonstrate her</p> <p>11 job-related knowledge?</p> <p>12 MS. SULLIVAN: Objection, asked and</p> <p>13 answered. Go ahead.</p> <p>14 A. Like I said, again, he has direct supervision</p> <p>15 over her. He's training her on the apparatuses and all</p> <p>16 the information that he's giving her to get through the</p> <p>17 program to -- the knowledge of -- and I'm assuming</p> <p>18 that's what -- what he's referring to.</p> <p>19 Q. (BY MR. MONTEIRO) Okay. Do you have any</p> <p>20 firsthand knowledge in terms of the basis for that</p> <p>21 comment?</p> <p>22 MS. SULLIVAN: Objection, asked and</p> <p>23 answered. Go ahead and answer.</p> <p>24 A. Go ahead and repeat that.</p> <p>25 Q. (BY MR. MONTEIRO) Sure. Do you have any</p>

<p style="text-align: right;">Page 49</p> <p>1 firsthand knowledge on the basis for Captain Green's</p> <p>2 comments on Page -- on Section 4?</p> <p>3 MS. SULLIVAN: Same objection. Go ahead and</p> <p>4 answer.</p> <p>5 A. I don't understand the question, "firsthand</p> <p>6 knowledge."</p> <p>7 Q. (BY MR. MONTEIRO) Did you ever observe -- let me</p> <p>8 try it again. Let me try it in a different way.</p> <p>9 A. Okay.</p> <p>10 Q. Did you ever observe Ms. Draycott being unable to</p> <p>11 demonstrate job-related knowledge, concepts, and</p> <p>12 techniques related to her job as an ARFF?</p> <p>13 A. No.</p> <p>14 Q. Okay. And then if we can go to Page 4 -- yeah,</p> <p>15 Page 4. Under the "Supervisor Comments" I asked you to</p> <p>16 read a minute ago, it says, "I told her on several</p> <p>17 occasions that she needed to spend more time training</p> <p>18 and drilling on the apparatus in the station. I wrote</p> <p>19 on her Form 42 relating to an emotional issue concerning</p> <p>20 her job performance. She started crying when I was</p> <p>21 inquiring about her knowledge."</p> <p>22 Are those your comments, Mr. Ponce?</p> <p>23 A. No.</p> <p>24 Q. Whose comments are those, if you know?</p> <p>25 A. Captain Green.</p>	<p style="text-align: right;">Page 51</p> <p>1 MS. SULLIVAN: I'd ask we take a quick</p> <p>2 break.</p> <p>3 MR. MONTEIRO: Sure. Can we go off the</p> <p>4 record?</p> <p>5 THE VIDEOGRAPHER: 11:49, off record.</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: 11:56, back on record,</p> <p>8 Disk 2.</p> <p>9 Q. (BY MR. MONTEIRO) Mr. Ponce, I want to shift our</p> <p>10 focus a bit to some of the complaints that were made</p> <p>11 about the women's dorm and the women's bathroom at</p> <p>12 Station 54. I'm going to ask you a couple of questions</p> <p>13 about that.</p> <p>14 A. Okay.</p> <p>15 Q. You -- in 2006 you were still assigned to Station</p> <p>16 54 on the B Shift. Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And do you remember an investigation by the</p> <p>19 Office of Inspector General into -- into an anonymous</p> <p>20 complaint made by a firefighter's wife about the</p> <p>21 condition of the women's dorm and bathroom in 2006?</p> <p>22 A. No.</p> <p>23 Q. Do you remember being interviewed about that</p> <p>24 complaint?</p> <p>25 A. I don't remember. I don't remember or recall,</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. And did you ever observe Ms. Draycott crying when</p> <p>2 Captain Green was inquiring about her job knowledge?</p> <p>3 A. No, I didn't see that.</p> <p>4 Q. Did you ever see the Form 42 that Captain Green</p> <p>5 references?</p> <p>6 A. No.</p> <p>7 Q. By the way, do you have -- as a senior captain,</p> <p>8 do you have responsibilities in -- to review the</p> <p>9 subordinate's Form 42s?</p> <p>10 A. Yes, I mean, I can review them if -- I mean, I</p> <p>11 guess if it's brought up to my attention and it's</p> <p>12 something very, very serious or the captain wants me to</p> <p>13 go and sit in the -- in the meeting with him and -- or</p> <p>14 the -- the -- sometimes, you know, if they refuse to</p> <p>15 sign, you know, the employee, and they want a witness</p> <p>16 and -- then they might call me over to go and -- and</p> <p>17 sign, you know, the refusal, but --</p> <p>18 Q. Okay. So -- but with respect to the Form 42</p> <p>19 that Captain Green references, you didn't have any</p> <p>20 involvement with that --</p> <p>21 A. No.</p> <p>22 Q. -- as far as you remember?</p> <p>23 A. No.</p> <p>24 Q. I think we're finished with that exhibit. You</p> <p>25 can return that to the court reporter.</p>	<p style="text-align: right;">Page 52</p> <p>1 no. Can you tell me -- this is a firefighter's wife</p> <p>2 making a complaint about the --</p> <p>3 Q. Condition of the women's bathroom at Station 54.</p> <p>4 A. A firefighter's wife. I don't remember.</p> <p>5 Q. Let me back up for a minute. It was an anonymous</p> <p>6 complaint made by a firefighter on behalf of his wife</p> <p>7 who visited the station and observed problems with the</p> <p>8 bathroom at 54.</p> <p>9 A. What year was that?</p> <p>10 Q. 2006.</p> <p>11 A. I don't remember. I don't recall.</p> <p>12 Q. Okay. Do you remember speaking with someone by</p> <p>13 the name of W.C. Jensen about that complaint?</p> <p>14 A. I don't remember.</p> <p>15 Q. Do you remember being asked about a complaint</p> <p>16 that there was urine on the countertops, the walls, and</p> <p>17 the sink in the women's bathroom?</p> <p>18 A. By who?</p> <p>19 Q. Well, do you remember any complaint related to</p> <p>20 that?</p> <p>21 A. I remember, yes, a complaint brought up to me.</p> <p>22 Q. Okay. Who made that complaint?</p> <p>23 A. Alexander, Nefertari.</p> <p>24 Q. Okay. So -- and we'll get back to that in a</p> <p>25 minute.</p>

<p style="text-align: right;">Page 53</p> <p>1 A. Okay.</p> <p>2 Q. But let -- let me just make sure I'm clear.</p> <p>3 Nefertari Alexander made a complaint. And what was her</p> <p>4 complaint to you?</p> <p>5 A. It was a direct complaint from her coming to my</p> <p>6 office. She came into my office and mentioned that --</p> <p>7 she just said, "Hey, come over here. It looks like it</p> <p>8 smells like urine." That's all she said to me. That</p> <p>9 was -- that's what she said to me.</p> <p>10 Q. Okay. And when she said, "Come over here,"</p> <p>11 what -- what was she referencing?</p> <p>12 A. She was referencing it smelled like urine.</p> <p>13 Q. No, but where? Where was she referencing?</p> <p>14 A. In the girl's dormitory.</p> <p>15 Q. Did you go into the dormitory with her?</p> <p>16 A. Yes, I did.</p> <p>17 Q. And did you smell urine when you went in with</p> <p>18 her?</p> <p>19 A. No, I didn't. I actually got pretty low looking</p> <p>20 at everything. There was -- I didn't see no signs, or I</p> <p>21 didn't smell any urine. So --</p> <p>22 Q. How many times did she come into your office to</p> <p>23 make that complaint?</p> <p>24 A. Just that morning or that -- just once.</p> <p>25 Q. Just once?</p>	<p style="text-align: right;">Page 55</p> <p>1 I think I started by asking you if you were ever -- if</p> <p>2 anyone -- if you were ever aware of a complaint of --</p> <p>3 about urine in the dorm in the bathroom, and you told me</p> <p>4 Ms. Alexander came to you -- came to you once. And we</p> <p>5 just talked about what she spoke with you about.</p> <p>6 So besides your conversation with Ms. Alexander,</p> <p>7 were you ever aware of any other complaints about urine</p> <p>8 in the women's dorm or the women's bathroom at Station</p> <p>9 54?</p> <p>10 A. No.</p> <p>11 Q. Okay. In the 2008/2009 time period, you were</p> <p>12 assigned to -- on the 54 B Shift still as a senior</p> <p>13 captain?</p> <p>14 A. Yes.</p> <p>15 Q. And did you ever become aware of Ms. Draycott</p> <p>16 making complaints about the condition of the women's</p> <p>17 dorm or bathroom at Station 54?</p> <p>18 A. No. I just want to say it's 2008. I don't know.</p> <p>19 Is this what -- she was working on my shift for those</p> <p>20 three months or four months that she was with me. I</p> <p>21 don't know if that's the time period, but she -- she</p> <p>22 didn't come up to me with any complaints when she was on</p> <p>23 the A Shift. I mean, she must have gone to her</p> <p>24 supervisors, but as far as -- I would say the time</p> <p>25 period that she was with me for that three or four</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And -- excuse me -- was Ms. Alexander</p> <p>3 assigned to your shift at that time?</p> <p>4 A. No, she was at Station 92.</p> <p>5 Q. So she was filling in on your shift?</p> <p>6 A. Filling in, yes.</p> <p>7 Q. Did -- did you go into the bathroom also -- the</p> <p>8 women's bathroom with her --</p> <p>9 A. No --</p> <p>10 Q. -- or just the dormitory?</p> <p>11 A. -- just the dorms.</p> <p>12 Q. So what did you tell Ms. Alexander?</p> <p>13 A. I told her exactly what I'm -- I said, "I don't</p> <p>14 smell it, Alexander." I mean -- "You don't smell it?"</p> <p>15 "No, I don't."</p> <p>16 I mean -- and I know I might sound foolish, but I</p> <p>17 got to where I was on my knees trying to smell. You</p> <p>18 know, I -- I just told her, "I don't smell urine." I</p> <p>19 couldn't smell it. So, I mean, I just walked out.</p> <p>20 Q. I'm sorry? You just walked out?</p> <p>21 A. Yeah, I just -- no, I mean, with her. I mean --</p> <p>22 Q. Oh.</p> <p>23 A. -- I talked to her, and a few times I had to let</p> <p>24 her know that I just couldn't smell it, you know.</p> <p>25 Q. Okay. All right. So let's back up for a minute.</p>	<p style="text-align: right;">Page 56</p> <p>1 months there at Station 54, I mean, she never came up to</p> <p>2 me with a complaint.</p> <p>3 Q. So on the B -- when she was assigned on the</p> <p>4 B Shift, she never complained to you about the condition</p> <p>5 of the women's dorm or the bathroom. Is that right?</p> <p>6 A. No, not to me.</p> <p>7 Q. Okay. And then at some point she was assigned --</p> <p>8 she moved to the A Shift at 54?</p> <p>9 A. Yes.</p> <p>10 Q. And so you were never made aware through any of</p> <p>11 the other captains that she had made complaints while</p> <p>12 she was working on the A Shift. Is that fair?</p> <p>13 A. I -- I heard complaints. I mean, there was</p> <p>14 complaints, but there's a -- a relief between me and --</p> <p>15 and Captain Tamez. As senior captains, we relieve each</p> <p>16 other every morning. And he never mentioned anything --</p> <p>17 anything to me direct, you know, about what was going on</p> <p>18 or -- but, you know, you hear people just saying, you</p> <p>19 know, "Oh, she's complaining about this. She's</p> <p>20 complaining about that," but nothing --</p> <p>21 Q. Okay. So I understand you say Senior Captain</p> <p>22 Tamez never --</p> <p>23 A. At relief time --</p> <p>24 Q. -- reported any complaints by Ms. Draycott to</p> <p>25 you. It sounds like you heard rumors. Is that --</p>

<p style="text-align: right;">Page 57</p> <p>1 A. Yeah.</p> <p>2 Q. -- fair?</p> <p>3 A. Yes.</p> <p>4 Q. So what did you -- what were you hearing about</p> <p>5 what Ms. Draycott was complaining about?</p> <p>6 A. I -- the only thing that I remember her -- it's</p> <p>7 just about a mattress. And it was just a conversation</p> <p>8 eating at breakfast, and that was it, that -- that --</p> <p>9 that -- something changing about her mattress or</p> <p>10 something.</p> <p>11 Q. And --</p> <p>12 A. It was just around the table eating, you know.</p> <p>13 Q. Do you know what that -- what -- what her</p> <p>14 complaint was about the mattress?</p> <p>15 A. No. Like I said, I -- it was just a conversation</p> <p>16 with the guys eating breakfast, and it was -- somebody</p> <p>17 just said she's complaining -- she mentioned something</p> <p>18 about did they change her mattress, and that's it.</p> <p>19 Q. I'm sorry. I didn't hear what you said. What</p> <p>20 about the mattress?</p> <p>21 A. They changed the mattress.</p> <p>22 Q. They changed the mattress. Okay.</p> <p>23 A. Yeah, that they swapped the mattress. That was</p> <p>24 it.</p> <p>25 Q. Was she complaining that the mattress in the</p>	<p style="text-align: right;">Page 59</p> <p>1 some rumors. And then throughout all these</p> <p>2 investigations and all that, I mean, then I'm hearing</p> <p>3 about the water being turned off or hot water; but at</p> <p>4 that -- at the time direct conversation with her or any</p> <p>5 of the captains mentioning to me that that was -- that</p> <p>6 that happened, I wasn't made aware personally by a</p> <p>7 superior or nothing like that or --</p> <p>8 Q. No, I understand that. You've made that clear.</p> <p>9 A. Uh-huh.</p> <p>10 Q. How about -- you mentioned Captain Henschel</p> <p>11 never -- I'm sorry -- Captain Tamez never mentioned to</p> <p>12 you any of Ms. Draycott's complaints. Did you ever</p> <p>13 speak with Captain Henschel about any of Ms. Draycott's</p> <p>14 complaints?</p> <p>15 A. No, no.</p> <p>16 Q. And does the -- does the B Shift always follow</p> <p>17 the A Shift on the calendar?</p> <p>18 A. Yes, at relief time.</p> <p>19 Q. Okay. So if the A Shift works 24 hours on</p> <p>20 Monday, the B Shift works 24 hours on Tuesday and so</p> <p>21 forth? Is that correct?</p> <p>22 A. Yes, yes, I believe.</p> <p>23 MR. MONTEIRO: Can we mark this as</p> <p>24 Deposition Exhibit No. 2, please?</p> <p>25 (Exhibit 2 marked.)</p>
<p style="text-align: right;">Page 58</p> <p>1 women's dorm was taken -- was removed?</p> <p>2 MS. SULLIVAN: Objection, asked and</p> <p>3 answered. Go ahead and answer.</p> <p>4 A. It wasn't a direct complaint to me. I just heard</p> <p>5 it over the table, I mean, that the -- that's what -- I</p> <p>6 guess that's what she said. It was just at breakfast,</p> <p>7 "Hey, she" -- they were saying that somebody swapped her</p> <p>8 mattress. That's all I heard.</p> <p>9 Q. (BY MR. MONTEIRO) Okay.</p> <p>10 A. But it was, like I said, at relief time by my</p> <p>11 senior captain making me aware that that was going on,</p> <p>12 the junior captain making me aware that that was going</p> <p>13 on.</p> <p>14 Q. It was just a discussion amongst --</p> <p>15 A. It wasn't a discussion. It's just something -- I</p> <p>16 heard it. It was somebody, you know, eating. Somebody</p> <p>17 I heard -- it was not even -- the question was not</p> <p>18 even -- it wasn't even a direct conversation. I just</p> <p>19 heard him saying it to somebody else that was sitting</p> <p>20 there.</p> <p>21 Q. Okay. Other than the mattress, were there any</p> <p>22 other -- did you hear anything else about any other --</p> <p>23 about any other complaints made by Ms. Draycott while</p> <p>24 she was on the 54 A Shift?</p> <p>25 A. Well, like I said, then I -- I did hear rumors,</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. (BY MR. MONTEIRO) I'm showing you what's been</p> <p>2 marked as Exhibit 2 to your deposition. If you could</p> <p>3 take a look at it and read it and let me know when</p> <p>4 you've had a chance to review it, please.</p> <p>5 MS. SULLIVAN: And for the record, can we</p> <p>6 say the Bates range just in case?</p> <p>7 MR. MONTEIRO: Oh, sure. Sorry. For</p> <p>8 identification purposes, this is HOU0000613 through</p> <p>9 HOU0000617 -- 6174.</p> <p>10 MS. SULLIVAN: 6173 to 6174.</p> <p>11 A. Okay.</p> <p>12 Q. (BY MR. MONTEIRO) Have you had a chance to</p> <p>13 review -- to review Deposition Exhibit 2?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. No.</p> <p>17 Q. If you look at the bottom of the first page, is</p> <p>18 that your signature at the bottom?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look halfway up, there's two sets of</p> <p>21 initials.</p> <p>22 A. Okay.</p> <p>23 Q. Are those your initials?</p> <p>24 A. Yes.</p> <p>25 Q. Do you remember receiving this 48-hour</p>

<p style="text-align: right;">Page 61</p> <p>1 notification from the City of Houston Office of 2 Inspector General? 3 A. I remember, yes. 4 Q. Okay. 5 A. You know, this is several -- this is -- you know, 6 it's been a while, but I know we -- we got several 7 Form 48s or -- you know, throughout. 8 Q. So what -- what is Exhibit 2 to your deposition? 9 A. I'm sorry? 10 Q. What is this document? 11 A. Okay. Yeah, I didn't read the very top. I 12 was -- I started from -- but I guess questions -- 13 alleged discriminations for gender because of numerous 14 problems, you know, that had been experienced at 15 Station 54. 16 Q. So you're being asked to attend a meeting at the 17 Office of Inspector General to submit a sworn written 18 statement concerning Ms. Draycott's alleged 19 discrimination due to her gender because of numerous 20 problems she's experienced at Fire Station 54. Is that 21 right? 22 A. Well, that's what it says; but like I said, I 23 don't remember the meeting. 24 Q. Okay. 25 A. There was a meeting. I don't --</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. And the second set of initials -- or sorry. Back 2 up. You initialed there twice, right? 3 A. Right. 4 Q. You initialed for the copy of the 48-hour notice? 5 A. Yes. 6 Q. And the 48-hour notice is what you have in your 7 hand, right? 8 A. Okay. Yes. 9 Q. And then you also initialed -- initialed receipt 10 of a copy of the complainant's statement. 11 A. Oh. 12 Q. Does that mean you would have received a copy of 13 Ms. Draycott's statement? 14 A. Statement. I don't remember. I don't remember 15 if I did. 16 Q. Would you have initialed that you received a copy 17 of the complainant's statement back in 2009 if you 18 hadn't? 19 A. Well, like I said, I -- I probably signed it, and 20 I -- I'm right now noticing "a copy of complainant's 21 statement," you know. And I don't know if at that time 22 I actually read that or -- but I signed it. 23 Q. Do you normally sign things or initial things 24 that you don't read? Is that your practice? 25 A. No. But like I said, at the time, you know, with</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. I'm sorry? 2 A. I mean, I don't remember, you know. I remember 3 giving statements to somebody. I mean, I don't know if 4 it was over this here. 5 Q. Is -- is the statement usually generated as a 6 result of the meeting with the Office of Inspector 7 General in your experience? 8 A. Like I said, I gave statements. I have 9 handwriting analysis. I -- you know, polygraphs. You 10 know, it's -- if I -- if this -- I got interviewed for 11 this. I'm sure that's what it was for, and I -- 12 Q. And it says -- the second set of initials is next 13 to "Copy of Complainant's Statement." Do you see that? 14 A. Yes, I had a few complainant's forms in my locker 15 at the time, you know. So I'm sure it -- that was it, 16 probably this here. 17 Q. I'm sorry. Can you say that again? 18 A. There was a few copies that I had over -- 19 throughout the years or at the time, and I'm sure this 20 was probably one of it -- one of them. 21 Q. Okay. I'm -- I'm just focusing on where it says, 22 "Acknowledgment: I acknowledge receipt of the following 23 document/items." And your -- I'm looking at the first 24 page, Mr. Ponce. 25 A. Okay.</p>	<p style="text-align: right;">Page 64</p> <p>1 all the things that are going on and the stress and 2 emotional -- I know they were coming in for questioning 3 or investigating and getting Form 42s. And -- and so if 4 that's what they gave me, you know, a 48-hour notice 5 and -- I -- I signed it -- or then a copy of the 6 complainant's statement, I signed it. Like I said, I'm 7 telling you I don't remember, you know. Maybe I did -- 8 you know, that's what they gave me, and I -- the right 9 things -- I did the right things. I'm just saying it's 10 so -- so long ago. 11 Q. Okay. 12 A. I mean, maybe if this happened today and they 13 gave this to me, I'll remember it, you know. But it's 14 just vaguely -- I don't remember, you know, or recall a 15 lot of things, you know. 16 Q. Okay. We're done with that document. You can 17 return that to the court reporter. 18 MR. MONTEIRO: You can mark that as 19 Exhibit 3? 20 (Exhibit 3 marked.) 21 MS. SULLIVAN: Thank you. 22 Q. (BY MR. MONTEIRO) Mr. Ponce, you're now looking 23 at Deposition Exhibit No. 3 for your deposition. For 24 identification purposes, it's marked HOU00006169 through 25 HOU00006172. If you could take a minute to review it</p>

<p style="text-align: right;">Page 65</p> <p>1 and let me know when you've had a chance to review it, 2 please. 3 A. Okay. 4 Q. Have you had a chance to review Exhibit 3? 5 A. Well, I read it. I read it as best as I could, 6 but -- 7 Q. That's fine. If I have specific questions -- 8 A. Okay. 9 Q. -- I'll try to direct you specifically -- 10 A. Okay. 11 Q. -- to -- to where it is. Do you recognize 12 Deposition Exhibit 3, Mr. Ponce? 13 A. Yes. 14 Q. Is this your sworn affidavit from November 3rd of 15 2009? 16 A. If that's what it says there, yes. 17 Q. And if you look at the bottom of Pages 1 through 18 4, there's a signature. Are those all your signatures, 19 sir? 20 A. Yes. 21 Q. And there's also initials on Pages 1 and 2. Are 22 those all your initials? 23 A. Yes. 24 Q. Does this appear to be a true and accurate copy 25 of the affidavit you signed on November 3rd of 2009?</p>	<p style="text-align: right;">Page 67</p> <p>1 inspect the women's restroom and the dorms? 2 A. Well, as -- I don't know if it was after Draycott 3 or -- or before, but -- or because of the complaints. 4 Q. Okay. And the complaints were related to the 5 condition of the women's dorm and the women's bathroom? 6 A. Possibly, yes. Yeah, that's what -- that was the 7 reason why the inspections were done. 8 Q. Okay. And do you have any -- strike that. 9 Do you have a specific recollection of 10 Chief McAteer ordering you to do this? 11 A. A direct conversation? No, but I -- I know there 12 was something put out -- it was by Chief McAteer or 13 Chief Sangle -- about not going into the dorms or using 14 the dorms -- women's dorms -- 15 Q. Okay. 16 A. -- or bathrooms. 17 Q. Well, my -- what I'm asking is if you have a 18 specific recollection of Chief McAteer ordering you to 19 inspect and conduct a walk-through of the women's dorm 20 and bathroom. 21 A. I don't recall him directly. He must have, but I 22 don't -- I don't recall him telling -- you know, telling 23 me to do that. 24 Q. Okay. Well, you -- you mentioned a few minutes 25 ago that, "We decided to do a roll call to inspect the</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Yes. 2 Q. And do you know if this is the statement that was 3 created as a result of the meeting that you had with the 4 Office of Inspector General which is referenced in 5 Exhibit 2? 6 A. Like I said, you know, it's a while back. If 7 that -- this is what the investigation was and the 8 affidavit over that, you know, yes. 9 Q. Okay. So if I can direct your attention to the 10 first question and answer on Page 2, it says -- which 11 starts, "Have you ever been in the women's restroom or 12 women's dorm at Fire Station 54 for any reason?" And 13 your answer was, "Yes, I have been in both areas to 14 inspect them and conduct a walk through." 15 A. Yes. 16 Q. Do you see that? 17 A. Yes. 18 Q. Who directed you to inspect and conduct a 19 walk-through of the women's restroom and women's dorm at 20 Station 54? 21 A. Well, I don't know if there was something put out 22 by Chief McAteer, but I know that we have roll calls 23 and -- and decided to -- to do a walk-through and 24 inspect the women's dorm and -- and restrooms. 25 Q. And -- and why was -- why did you-all decide to</p>	<p style="text-align: right;">Page 68</p> <p>1 restrooms and the dorms." 2 A. I'm saying it's possible, you know, like I said, 3 the captains came up with that decision or it was a 4 decision by Chief McAteer. I -- I don't remember. You 5 know, the thing was that -- that we were going to start 6 doing inspections of the dorms and the restrooms. 7 Q. Okay. And what was the purpose of doing the 8 inspections? 9 A. To make sure that, you know, everything was 10 normal and clean. 11 Q. And was it your practice then to do the 12 inspections at the beginning of your shift or the end of 13 your shift, or what was your practice? 14 A. At the beginning. 15 Q. Were you the only person who did the inspections 16 on your shift? 17 A. No. I just did that maybe a couple of times, and 18 then that -- I think that was the junior captain or 19 whoever was acting captain or whoever was assigned to do 20 it. I -- 21 Q. So did you assign a subordinate to do it at some 22 point? 23 A. Like I said, Captain Wurst, he's the one who 24 handled the subordinates and the station duties. And if 25 he assigned someone or it was him doing it, I just</p>

Page 69

1 let -- I just -- like I was telling you, I just did that
2 a couple of times and -- and that was maybe because
3 Captain Wurst wasn't there or -- but that was -- that
4 was not my -- my duties to do that. It was somebody
5 else doing it.

6 Q. Okay. And when you -- when you conducted the --
7 on the occasions that you conducted the walk-through or
8 inspection, what were you looking for?

9 A. Well, make -- making sure, you know, everything
10 was in order, I mean, just normal, a normal -- it was a
11 clean station, clean bathrooms.

12 Q. Okay.

13 A. Yeah.

14 Q. And what did you find when you did the
15 walk-throughs of the women's dorm and the women's
16 bathroom?

17 A. Like I said, the -- the two times that I did
18 that, everything was normal.

19 Q. You did it two times is your memory?

20 A. Yeah. Like I said, it was a couple of times, you
21 know. It was --

22 Q. Did you ever find it necessary to clean the dorm
23 or the bathroom as a result of your walk-through or
24 order someone else to do it?

25 A. Like I said, I didn't see -- those -- those two

Page 70

1 times that I went in there, I didn't -- everything was
2 normal. Everything was clean. Everything was in order.

3 Q. Okay. And how did you access the women's dorm
4 when you were doing your walk-throughs?

5 A. I guess through the -- there's a couple of
6 entrances, but I used one of the entrances. And there's
7 only one entrance to the bathroom.

8 Q. Do you need a key to access the dorm?

9 A. No.

10 Q. Excuse me. Do you need a key to access the
11 bathroom?

12 A. I know you can lock -- I think there -- there is
13 access with a -- I think they have locks, if I can
14 recall. So I know you can lock the -- the dorms from
15 the inside. So I think every -- every door has a -- a
16 key lock. So I'm assuming all -- on all the stations
17 you go in the laundry room or captains' rooms,
18 there's -- there's keys, you know, sets of keys.

19 Q. And do you remember needing a key to access the
20 women's bathroom?

21 A. No, no, they -- no, they were open.

22 Q. So if someone is inside there and it's locked
23 from the inside, then you would need a key to open it.

24 A. Yes.

25 Q. Is that right?

Page 71

1 A. Yes.

2 Q. Okay. All right. Let's look at your -- let's go
3 back to Exhibit 3 and look at the second question and
4 answer where you were asked, "Do you have knowledge of
5 any male firefighter being in the women's restroom or
6 women's dorm at Fire Station 54 for any reason?" And
7 you go on to say, "I believe it was two to three years
8 ago firefighters used to go in the women's dorm to
9 study."

10 A. Yes.

11 Q. What do you know about that?

12 A. Well, throughout the years that -- that room had
13 been used by all four shifts, you know, go in there
14 and -- you know, there was always someone studying for
15 promotions. I know they used it for -- you know, while
16 they were studying.

17 Q. And then you go on to say, "but then the female
18 fire" -- excuse me -- "the female firefighters began to
19 complain that the male firefighters were using the
20 dorm."

21 A. Right.

22 Q. What do you know about female firefighters
23 complaining that the male firefighters were using the
24 dorm?

25 A. Well, like I said, I know definitely that

Page 72

1 Alexander was the one who brought that to my attention.

2 Q. This is where she came into your office and said
3 the dorm smelled like urine that we talked about
4 earlier?

5 A. It could be that -- that -- after that or -- or
6 before. I just can't recall.

7 Q. Okay.

8 A. You know, I just can't recall if it was at -- you
9 know, after Alexander makes her complaint or before.

10 Q. Okay. But that -- did she -- did she complain to
11 you that the male firefighters were using the dorm?

12 A. Like I said, she complained to me about the
13 urine, the urine, the smelling of the urine.

14 Q. Okay.

15 A. Yes.

16 Q. Did you take that to mean that she was
17 complaining that men were using the dorm?

18 A. Well, you know, she -- yeah, she -- she did
19 complain about that -- that men were using the dorm,
20 yes.

21 Q. Okay.

22 A. Uh-huh.

23 Q. Was that a separate -- so let me just make sure I
24 understand. Was that a -- was that a separate occasion
25 than the time that she came into your office and told

<p style="text-align: right;">Page 73</p> <p>1 you that the dorm smelled like urine?</p> <p>2 A. It's possible. I just don't remember.</p> <p>3 Q. Okay.</p> <p>4 A. But I know that direct conversation with her</p> <p>5 about the urine. I don't remember about -- if she made</p> <p>6 other complaints, I -- I -- minor complaints about the</p> <p>7 trash or a spit cup -- I think I heard spit cup. I</p> <p>8 don't know if she mentioned that, but -- like I said,</p> <p>9 but I know the one that I -- from her about the urine,</p> <p>10 the smelling of urine in the bed or by where she sleeps.</p> <p>11 Q. Okay. Let's go back to your statement. Maybe it</p> <p>12 will help refresh your memory. You go on to say, "I</p> <p>13 believe Firefighter Nefertaria (sic) Alexander brought</p> <p>14 to my attention one time when she was filling in at</p> <p>15 Station 54 from Station 92. She told me that the male</p> <p>16 firefighters were using the women's dorm by leaving</p> <p>17 things around like cups and plates."</p> <p>18 Does that help refresh your memory in terms of --</p> <p>19 A. Like I said, I -- like I was just telling you,</p> <p>20 I've heard it. I've heard it before. I mean, I don't</p> <p>21 remember exactly she telling -- telling me that; but, I</p> <p>22 mean, you know, if she did back then and -- you know,</p> <p>23 that's what I wrote down, but it's just right now</p> <p>24 talking about it, that -- the one -- the thing that</p> <p>25 comes out the most is about the urine. But, I mean,</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Okay.</p> <p>2 A. I'm talking about Alexander. We're talking about</p> <p>3 Alexander.</p> <p>4 Q. Okay.</p> <p>5 A. I don't remember any other female, you know,</p> <p>6 telling me or complaining about that. I'm talking about</p> <p>7 Alexander here, that she brought this up to my</p> <p>8 attention.</p> <p>9 Q. Okay. So she may have -- she reported to you</p> <p>10 that there were spit cups in the women's dorm?</p> <p>11 MS. SULLIVAN: Objection, asked and</p> <p>12 answered. Go ahead.</p> <p>13 A. Like I said, if I put -- at the time -- at the</p> <p>14 time that I wrote this, I guess maybe my mind was a</p> <p>15 little more -- you know, I could recall and she did.</p> <p>16 But right now looking back, okay, I was so concentrated</p> <p>17 on the urine. That was my main focus.</p> <p>18 Q. (BY MR. MONTEIRO) Okay.</p> <p>19 A. That was my main focus. That's what I was</p> <p>20 thinking. About the cups and -- man, that -- there's</p> <p>21 some places, you know -- you know, in the -- in the --</p> <p>22 in the kitchen and different places, people, you know,</p> <p>23 at night leave things. And that's part of the station</p> <p>24 duties in the mornings when you come and clean up.</p> <p>25 Every morning you -- people leave things, and you clean</p>
<p style="text-align: right;">Page 74</p> <p>1 there was -- you know, throughout the -- the station,</p> <p>2 you know, and other people talking, cups and spits -- I</p> <p>3 mean, about plates and cups.</p> <p>4 Q. So you say that Ms. Alexander complained that the</p> <p>5 male firefighters were using the women's dorm by leaving</p> <p>6 things around like cups and plates.</p> <p>7 A. Okay.</p> <p>8 Q. By "cups," do you mean spit cups?</p> <p>9 A. Like I said, I don't remember her having that</p> <p>10 conversation exactly, spit. I just heard people talking</p> <p>11 about it. Or if she went to the junior captain and the</p> <p>12 junior captain maybe told me, "Hey, you know, she's</p> <p>13 complaining about spit cups and" -- "and" -- so if she</p> <p>14 did tell me at that time and -- and I -- I put that, she</p> <p>15 probably did come tell me, you know, hey, about the cups</p> <p>16 and plates, you know.</p> <p>17 Q. Okay. And do you have a recollection whether it</p> <p>18 was spit cups she was complaining about or just cups?</p> <p>19 A. I don't remember.</p> <p>20 Q. Okay.</p> <p>21 A. I don't remember spit cups or --</p> <p>22 Q. But you were aware that, whether it was</p> <p>23 Ms. Alexander herself or someone else, someone had made</p> <p>24 complaints about spit cups in the women's dorm, right?</p> <p>25 A. It was Alexander. It was Alexander.</p>	<p style="text-align: right;">Page 76</p> <p>1 them up. But, yeah, that's why, I guess, when she -- if</p> <p>2 she -- she did mention cups, you know, I -- that didn't</p> <p>3 concern me much. It was more the urine. I wanted to --</p> <p>4 you know, I was worried about that.</p> <p>5 Q. Okay. So you go on to say, "I talked to Captain</p> <p>6 Wurst about it and I addressed it to my subordinates."</p> <p>7 A. Uh-huh.</p> <p>8 Q. What do you remember about that?</p> <p>9 A. Well, yeah, like I said, I was telling you we</p> <p>10 have roll calls. And -- and if something like this</p> <p>11 comes up, you know, which is pretty serious to me, you</p> <p>12 know, "Hey, let's have a roll call and discuss this and</p> <p>13 talk about it," you know. So that -- that's what I'm</p> <p>14 meaning.</p> <p>15 Q. So what did you -- you say you addressed it to</p> <p>16 your subordinates. What does that mean? How did you</p> <p>17 address it to your subordinates?</p> <p>18 MS. SULLIVAN: Objection, asked and</p> <p>19 answered. Go ahead.</p> <p>20 A. Like I said, we have roll calls and, "Hey, look,</p> <p>21 this is what's going on. This is what, you know,</p> <p>22 they're saying and" -- or, "this is what's, you know,</p> <p>23 the problem," or -- and so if that was about Alexander</p> <p>24 complaining about that, I'm sure, you know, we -- we</p> <p>25 went over it.</p>

<p style="text-align: right;">Page 77</p> <p>1 Q. (BY MR. MONTEIRO) So did you tell them to --</p> <p>2 excuse me. Did you tell your subordinates to clean up</p> <p>3 after themselves when they were in the women's dorm?</p> <p>4 A. No, no, no. I mean, that's the thing. You know,</p> <p>5 you come in the morning, and you eat breakfast. And at</p> <p>6 a certain time, it's clean-up time. It's clean-up time.</p> <p>7 So at 8:00 o'clock, everybody goes to their assigned</p> <p>8 area and -- and clean up. So that -- my main concern</p> <p>9 was -- when we had that roll call was about what she was</p> <p>10 complaining about.</p> <p>11 Q. Your statement says that she complained to you</p> <p>12 about male firefighters using the dorm and leaving cups</p> <p>13 and plates in the women's dorm, right?</p> <p>14 A. Okay.</p> <p>15 Q. And then you go on to say that you spoke with</p> <p>16 Captain Wurst about it and you "addressed it with my</p> <p>17 subordinates." So I'm trying to understand what you</p> <p>18 communicated to your subordinates.</p> <p>19 A. Well, it's -- it's related to -- to this. The --</p> <p>20 now, I can't tell you exactly cups and plates, but it is</p> <p>21 just the -- the complaint about the urine. And if --</p> <p>22 if -- if I go back and maybe to that day and can</p> <p>23 remember exactly what we went over, I can't do it, you</p> <p>24 know, but it was about cups and plates or -- or not</p> <p>25 using the -- the -- you know, the dorms for the females.</p>	<p style="text-align: right;">Page 79</p> <p>1 gave to your subordinates?</p> <p>2 A. Like I said, I don't remember. I'm -- I'm</p> <p>3 telling you that; but, you know, that -- that was</p> <p>4 addressed. That was addressed. And then possibly, you</p> <p>5 know, we'd say, "Hey, you know, don't" -- "don't go in</p> <p>6 there," or -- or if that room was still being used for</p> <p>7 studying, "Pick up after you." The thing was to correct</p> <p>8 the -- the complaint if -- that was what the roll call</p> <p>9 was about. Now, exactly how we addressed it, I -- what</p> <p>10 I -- what Captain Wurst said or I said, you know, I</p> <p>11 don't remember. I mean, it's just --</p> <p>12 Q. Okay. So when you -- when you said -- you just</p> <p>13 said a minute ago -- strike that.</p> <p>14 You don't know whether the subordinates were told</p> <p>15 not to go in the women's dorm, do you, during this roll</p> <p>16 call?</p> <p>17 A. I --</p> <p>18 MS. SULLIVAN: Objection, mischaracterizes</p> <p>19 the testimony. Go ahead and answer.</p> <p>20 A. Like I said, at that time, like I was telling</p> <p>21 you, I don't remember. I know that after that bulletin</p> <p>22 was put out or -- or that order, you know, we weren't</p> <p>23 allowed to go in there. Nobody was to use it, but I</p> <p>24 don't remember at this time if it still was being used,</p> <p>25 if there was an order at that time not to go in there.</p>
<p style="text-align: right;">Page 78</p> <p>1 It's just I can't -- can't recall. I mean, but we did</p> <p>2 discuss it and went over it, you know.</p> <p>3 Q. Do you remember giving your subordinates any</p> <p>4 instructions during this roll call?</p> <p>5 MS. SULLIVAN: Objection, asked and</p> <p>6 answered. Go ahead.</p> <p>7 A. Like I said, let's -- let's take it back here a</p> <p>8 little bit. The one that was -- I think it was Captain</p> <p>9 Wurst. Captain Wurst was the one that -- that was</p> <p>10 addressing this complaint because I passed it over to</p> <p>11 Captain Wurst -- to Captain Wurst, you know, what was</p> <p>12 going on. We talked about it. And then, "Okay. Let's</p> <p>13 get the guys together and" -- "and address it."</p> <p>14 Q. (BY MR. MONTEIRO) But you don't have any -- do</p> <p>15 you have any memory of how it was addressed with the</p> <p>16 subordinates?</p> <p>17 A. No, no.</p> <p>18 Q. Okay.</p> <p>19 A. I mean, I don't. I mean, it's just --</p> <p>20 Q. You --</p> <p>21 A. We addressed -- it was addressed over the</p> <p>22 complaint.</p> <p>23 Q. You raised -- excuse me. You raised the fact</p> <p>24 that Ms. Alexander reported these things to you, but you</p> <p>25 didn't -- you don't remember any instructions that you</p>	<p style="text-align: right;">Page 80</p> <p>1 I don't remember. But -- but if the guys were still</p> <p>2 using it to study, I don't remember.</p> <p>3 Q. (BY MR. MONTEIRO) Okay. Do you remember if you</p> <p>4 ever spoke with Ms. Alexander about whether the issue</p> <p>5 had been resolved after you had this roll call?</p> <p>6 A. No.</p> <p>7 Q. You don't remember, or you did not speak with her</p> <p>8 again?</p> <p>9 A. I didn't speak with her again about -- over that</p> <p>10 because, like I said, I -- basically when we came out of</p> <p>11 the room, I told her, "I don't smell anything. I don't</p> <p>12 see anything." That's -- you know, so -- but like I</p> <p>13 said, we -- we walked out of there, and -- and -- and</p> <p>14 she didn't seem to push it or --</p> <p>15 Q. Let's go down a little bit in -- in the same</p> <p>16 paragraph that we've been looking at. You say, "At some</p> <p>17 point there was a memo issued by Chief McAteer stating</p> <p>18 that male firefighters to stay out of the restroom and</p> <p>19 dorm dedicated to female firefighters."</p> <p>20 Do you see that there?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know when Chief McAteer issued that?</p> <p>23 A. No, I don't. It could be before or after --</p> <p>24 after the incident.</p> <p>25 Q. Do you know why he issued that bulletin?</p>

<p style="text-align: right;">Page 81</p> <p>1 A. Like I said, if it was after the incident, I 2 mean, it was because of what happened there, Draycott's 3 incident there at the station. 4 Q. And if it was issued before Ms. Draycott's -- 5 A. Well, it's possibly -- 6 Q. -- problems at the station? 7 A. -- because of, you know, there was complaints 8 about it. So I just don't remember if it was before or 9 after. 10 Q. Do you know if he issued it in response to what 11 Ms. Alexander spoke to you about? 12 MS. SULLIVAN: Objection, asked and 13 answered. Go ahead and answer. 14 A. Like I said, I don't remember. I don't think it 15 was over that, but I just don't remember it. 16 Q. (BY MR. MONTEIRO) Do you know if he issued more 17 than one bulletin directing the males to stay out of the 18 female dorm and bathroom? 19 A. I don't remember that. I just remember the one 20 real clearly that they were not allowed to use it. 21 Q. And how was that bulletin transmitted to you? 22 Like, how were you -- strike that. 23 How were you made aware of that bulletin? 24 A. Well, there's ARFF bulletins -- ARFF bulletins or 25 ARFF guide -- special bulletins or orders. I would</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. MONTEIRO: Could we mark this as 2 Exhibit 4, please? 3 (Exhibit 4 marked.) 4 Q. (BY MR. MONTEIRO) Mr. Ponce, you're looking at 5 what's been marked as Deposition Exhibit 4. For 6 identification purposes, it has the Bates Nos. 7 HOU0000814 through HOU0000817. 8 MR. MONTEIRO: Can we go off the record for 9 one minute? I think I might have a stapling issue. 10 THE VIDEOGRAPHER: 12:51, off record. 11 (Recess.) 12 THE VIDEOGRAPHER: 12:51, back on record. 13 Q. (BY MR. MONTEIRO) For identification purposes, 14 the document is marked HOU0000814 through 0000818. And 15 if you could take a look at this document and let me 16 know if -- when you've had a chance to review it, 17 please. 18 THE WITNESS: Can I borrow your pen here? 19 MS. SULLIVAN: You can't mark on the 20 exhibit. 21 A. Oh, okay. Okay. 22 Q. (BY MR. MONTEIRO) Have you had a chance to 23 review Exhibit 4 -- 24 A. Yes. 25 Q. -- Mr. Ponce?</p>
<p style="text-align: right;">Page 82</p> <p>1 think that would probably be an order. 2 Q. Is that something that you would receive, like, a 3 physical copy of? 4 A. Yes, something that we would -- 5 Q. Sorry. Go ahead and finish. 6 A. Yes, something that, yeah, we -- they put out in 7 writing, and we're aware of it. 8 Q. Are those circulated to the captain as well? 9 A. They do it to everybody. 10 Q. Everyone? 11 A. Yes. 12 Q. There's -- 13 A. You have to initial it, you know. 14 Q. Your subordinates would have received it also? 15 A. Yes. 16 Q. I think we're done with that exhibit, Mr. Ponce. 17 You can return that to the court reporter. 18 MS. SULLIVAN: Can we take a short -- just a 19 short second break so I can -- 20 MR. MONTEIRO: Sure. 21 MS. SULLIVAN: -- talk to you off the 22 record? 23 THE VIDEOGRAPHER: 12:48, off record. 24 (Recess.) 25 THE VIDEOGRAPHER: 12:50, back on record.</p>	<p style="text-align: right;">Page 84</p> <p>1 And do you recognize this document? 2 A. Yes. 3 Q. Is this your sworn affidavit from July 8th of 4 2009? 5 A. That's what it says, yes. 6 Q. And directing your attention to Page 3 of the 7 document, there's a signature. Is that your signature? 8 A. Yes. 9 MS. SULLIVAN: Wait. 10 A. Initials? 11 Q. (BY MR. MONTEIRO) Sorry. Page 4. Excuse me. 12 A. Yes. 13 MS. SULLIVAN: Just for clarity, we're 14 looking at Page HOU-817? 15 MR. MONTEIRO: Correct. 16 MS. SULLIVAN: Okay. Because I've got 17 Page 2 of 3 and -- 18 Q. (BY MR. MONTEIRO) And there's also initials on 19 Page 1 of 3 and Page 2 of 3. Are those your initials? 20 A. Yes. 21 Q. And does this appear to be a true and accurate 22 copy of the affidavit you provided on July -- that you 23 signed on July 8th of 2009? 24 A. Yes. 25 Q. Let's look at Page 2 of 3. And you're recounting</p>

<p style="text-align: right;">Page 85</p> <p>1 the morning of July 7th, 2009, and you say you spoke</p> <p>2 with Jane Draycott. You ran into Jane Draycott on the</p> <p>3 apparatus floor that morning?</p> <p>4 A. Yes.</p> <p>5 Q. And you say she -- you go on to say, "She had a</p> <p>6 look of disbelief on her face and appeared to be shocked</p> <p>7 by whatever she was asking me to come and see."</p> <p>8 Do you see that --</p> <p>9 A. Yes.</p> <p>10 Q. -- in your statement?</p> <p>11 You say, "She had a look of disbelief on her</p> <p>12 face." Can you describe what you observed that led you</p> <p>13 to that conclusion?</p> <p>14 A. Well, she walked out and -- and said to me, "Hey,</p> <p>15 look, Captain. Look what they did, you know, in" -- "in</p> <p>16 the dorms." I mean, you know, she just -- something</p> <p>17 happened in there. So --</p> <p>18 Q. And what --</p> <p>19 A. -- you know, making me aware of it. It wasn't</p> <p>20 calm. You know, it was like, you know, something was</p> <p>21 wrong in there. I mean --</p> <p>22 Q. And did you go into the dorm and see what was in</p> <p>23 there?</p> <p>24 A. Yes.</p> <p>25 Q. And what did you observe?</p>	<p style="text-align: right;">Page 87</p> <p>1 statement right now. And I'm saying, you know, I saw</p> <p>2 that -- that -- what is in there, but I don't remember</p> <p>3 it. I don't remember it now. That's what -- that's</p> <p>4 what I'm saying, if -- after --</p> <p>5 Q. Sitting here today, you don't remember it, but --</p> <p>6 A. Yeah, I remember the -- the -- the writings or --</p> <p>7 I mean, even if she opened her locker and she said there</p> <p>8 was writing on her pictures, I don't remember that.</p> <p>9 Q. And had you -- you -- you also say that</p> <p>10 Ms. Draycott appeared to be shocked. What about her --</p> <p>11 what about the way she was acting led you to believe</p> <p>12 that she was shocked?</p> <p>13 A. I'm -- while we were inside, or while she was</p> <p>14 asking me at the beginning that something had -- was</p> <p>15 wrong? You understand what I'm saying? While we were</p> <p>16 inside the -- when she's -- when she's telling me things</p> <p>17 that are happening inside or what she saw, that's what</p> <p>18 you're referring to, if she's in shock because of that?</p> <p>19 Or she asking me at the beginning, you know, what she</p> <p>20 found?</p> <p>21 Q. So -- so you're -- I'm just -- I'm -- I'm</p> <p>22 referencing your affidavit. You say, "She had a look of</p> <p>23 disbelief on her face and appeared to be shocked by</p> <p>24 whatever she was asking me to come and see."</p> <p>25 A. Well, right there, that's what I'm saying. That</p>
<p style="text-align: right;">Page 86</p> <p>1 A. Well, like I said, it's -- it's -- it's been a</p> <p>2 while, but I know I was in shock. I was in shock, and</p> <p>3 I -- to be honest, you know, it's -- it's hard for me to</p> <p>4 remember now. It -- I can't remember, you know, but --</p> <p>5 basically because I was in shock. I mean, I know that I</p> <p>6 was in that room not long, but I remember writing --</p> <p>7 writings on the wall. I remember, you know, she opening</p> <p>8 her -- swinging her -- her -- her locker open and</p> <p>9 mentioning to me that they had writing on the -- on the</p> <p>10 pictures.</p> <p>11 Now, I don't remember any writing. Like I said,</p> <p>12 I was completely in shock. So -- but she's telling me</p> <p>13 this. "They wrote on my, you know, pictures." So she</p> <p>14 made me turn around and look at other things that I</p> <p>15 don't remember.</p> <p>16 Q. Okay.</p> <p>17 A. I don't even remember what -- there was writing.</p> <p>18 I don't remember what -- what -- what it said. After, I</p> <p>19 guess, I -- I gasped myself, I said, "Hey, you know,</p> <p>20 Draycott, we need to get out of here." I said, "Don't</p> <p>21 touch anything." I said, "Let's walk out of here."</p> <p>22 Q. Okay. So your testimony is you don't remember</p> <p>23 anything that was written on the wall, what the words</p> <p>24 were?</p> <p>25 A. Well, what I'm saying, you know, I read my</p>	<p style="text-align: right;">Page 88</p> <p>1 was before we went in the room. She came out of there,</p> <p>2 and she looked at me and said, "Hey, look what they've</p> <p>3 done," you know -- you know, "Come here." But, you</p> <p>4 know, she just looks -- looked like something had</p> <p>5 happened in there, you know. You could see the</p> <p>6 expression.</p> <p>7 Q. Can you describe what her expression was sitting</p> <p>8 here today?</p> <p>9 A. It was -- it was -- it was just -- like I'm just</p> <p>10 telling you, she's, "Captain, come in here. Look, you</p> <p>11 know, what they did," I mean, just like that, you know.</p> <p>12 It was, you know --</p> <p>13 Q. Had you ever observed her this way during your</p> <p>14 other workplace interactions with her?</p> <p>15 A. I've never had any interactions with her, you</p> <p>16 know, with a situation like that. I mean, I've seen</p> <p>17 her, a normal person, you know, the -- the times that I</p> <p>18 worked with her, which was, like I said, a couple --</p> <p>19 three months or so.</p> <p>20 Q. She wasn't acting normal, right, that morning?</p> <p>21 Sorry. Strike that.</p> <p>22 Had you ever -- had you ever seen -- excuse me.</p> <p>23 Had you ever seen Ms. Draycott act shocked before?</p> <p>24 A. No.</p> <p>25 Q. Had you ever seen her have a look of disbelief on</p>

<p style="text-align: right;">Page 89</p> <p>1 her face?</p> <p>2 A. No.</p> <p>3 Q. Now, turning to the bottom of Page 2 of your</p> <p>4 affidavit, you are discussing Paula Keyes, and you say</p> <p>5 she was visibly -- visibly upset and had tears in her</p> <p>6 eyes.</p> <p>7 A. Yes.</p> <p>8 Q. What -- can you describe what you observed from</p> <p>9 Ms. Keyes that led you to believe she was visibly upset?</p> <p>10 A. Yes. I mean, she was -- yeah, I could tell the</p> <p>11 difference. I mean, she -- like I said, she was kind of</p> <p>12 screaming and -- and yelling, I mean, raising her voice</p> <p>13 and -- and very upset, I mean, very -- there's a big</p> <p>14 difference. I mean, like I said, she had tears, or</p> <p>15 maybe that's what I saw because of the way she was</p> <p>16 trying to grab the phone, calling somebody and, you</p> <p>17 know -- yeah, it's --</p> <p>18 Q. And had you ever observed Ms. Keyes upset like</p> <p>19 this --</p> <p>20 A. No.</p> <p>21 Q. -- in the workplace --</p> <p>22 A. No.</p> <p>23 Q. -- prior to this incident?</p> <p>24 A. No.</p> <p>25 Q. And do you know who wrote -- who did those</p>	<p style="text-align: right;">Page 91</p> <p>1 that right?</p> <p>2 A. No. I don't remember.</p> <p>3 MR. MONTEIRO: All right. Can we go off the</p> <p>4 record for a minute? I think I'm about done.</p> <p>5 THE VIDEOGRAPHER: 1:07, off record.</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: 1:11, back on record,</p> <p>8 Disk 3.</p> <p>9 Q. (BY MR. MONTEIRO) Mr. Ponce, I don't have any</p> <p>10 other questions for you at this time. Thank you for</p> <p>11 your time in answering my questions. Mr. Ahmad may have</p> <p>12 a few questions for you.</p> <p>13 A. Okay. Thank you.</p> <p>14 EXAMINATION</p> <p>15 BY MR. AHMAD:</p> <p>16 Q. Good afternoon.</p> <p>17 THE VIDEOGRAPHER: Sir, your microphone.</p> <p>18 MR. AHMAD: Oh, yes.</p> <p>19 Q. (BY MR. AHMAD) Good afternoon, Mr. Ponce.</p> <p>20 A. Good afternoon.</p> <p>21 Q. When you first saw the -- the graffiti and the</p> <p>22 vandalism in the women's dormitory, what -- what did you</p> <p>23 think?</p> <p>24 A. Well, like I was saying, I'm in shock. I mean,</p> <p>25 I'm in shock. I mean, that's -- I knew that's something</p>
<p style="text-align: right;">Page 90</p> <p>1 writings in the dorm?</p> <p>2 A. No.</p> <p>3 Q. Do you have any idea who might have written them?</p> <p>4 A. No.</p> <p>5 Q. Ms. Draycott was off of work for some period of</p> <p>6 time after these writings were found in the dorm, and</p> <p>7 she actually sought to return to work at Station 54.</p> <p>8 Were you involved in that at all?</p> <p>9 A. No.</p> <p>10 Q. Were you involved in any discussions with the</p> <p>11 fire department about her return to work, Ms. Draycott's</p> <p>12 return to work?</p> <p>13 A. No. Like I said, I just heard she was coming</p> <p>14 back to work.</p> <p>15 Q. Were you involved in any discussions amongst the</p> <p>16 Station 54 A crew regarding her return to work?</p> <p>17 A. It's possible. You know, like I said, at relief</p> <p>18 time people talking that she's coming back, she wants to</p> <p>19 come back, you know, just normal talk around the fire</p> <p>20 station that -- I don't know who with, you know, who was</p> <p>21 saying it or who was talking about it, but not a</p> <p>22 personal thing with someone letting me know, "Hey, she's</p> <p>23 returning back and" --</p> <p>24 Q. But you can't remember specifically talking to</p> <p>25 anyone on the 54 A crew about her return to work. Is</p>	<p style="text-align: right;">Page 92</p> <p>1 real serious. I -- you know, when I was -- you know,</p> <p>2 what I was going through, what I was feeling, it's hard</p> <p>3 to, I mean, explain. And all I can do is just shocked.</p> <p>4 That's the only thing I can come up with.</p> <p>5 Q. Yeah. I mean, that was very serious harassment</p> <p>6 toward Firefighter Draycott and Firefighter Keyes.</p> <p>7 Would you agree?</p> <p>8 MS. SULLIVAN: Objection, mischaracterizes</p> <p>9 the testimony and the evidence in the record. It also</p> <p>10 calls for a legal conclusion.</p> <p>11 Q. (BY MR. AHMAD) In your opinion would you</p> <p>12 consider that very serious harassment toward Firefighter</p> <p>13 Draycott and Firefighter Keyes?</p> <p>14 MS. SULLIVAN: Same objection, calls for a</p> <p>15 legal conclusion. Go ahead and answer.</p> <p>16 A. I'm allowed to give opinions?</p> <p>17 Q. (BY MR. AHMAD) Yes.</p> <p>18 MS. SULLIVAN: Go ahead.</p> <p>19 Q. (BY MR. AHMAD) You may give your opinion.</p> <p>20 A. Well, like I said, I don't remember much, you</p> <p>21 know, but -- because I was in shock, but I knew that</p> <p>22 what I was seeing was -- was bad. Now, like I said, it</p> <p>23 was addressed to Jane -- if it's, like I said, addressed</p> <p>24 to Jane and Paula or whatever, I mean, if it's somebody</p> <p>25 you said did that, yeah, it's pretty bad.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. Now, I believe you testified earlier that you do 2 not know who -- who committed that graffiti and 3 vandalism? 4 A. No. 5 Q. Okay. It might have been a member of Station 54, 6 would you agree? 7 MS. SULLIVAN: Objection, calls for 8 speculation. Go ahead and answer. 9 A. I don't know, I mean, who it could have been, 10 period. 11 Q. (BY MR. AHMAD) So it could have been a member 12 from Station 54, would you agree? 13 MS. SULLIVAN: Object -- objection, calls 14 for speculation. Go ahead. 15 A. Like I said, I -- I don't know who would have 16 done it. 17 Q. (BY MR. AHMAD) I understand. 18 MR. AHMAD: Objection, nonresponsive. 19 Q. (BY MR. AHMAD) I'm simply asking you: It could 20 have been a member from Station 54 who committed that 21 graffiti and vandalism? 22 MS. SULLIVAN: Objection, calls for 23 speculation, asked and answered, argumentative, 24 harassment at this point. Go ahead. 25 Q. (BY MR. AHMAD) Would you agree with that, sir?</p>	<p style="text-align: right;">Page 95</p> <p>1 years, you know -- I mean, at the beginning when you 2 first -- first see it, you know, you don't know. You -- 3 yeah, you think it's one of your guys who thinks, you 4 know -- throughout the years, you know, sometimes you 5 start forming -- you know, as investigations and -- and 6 talking to people and seeing people's reactions 7 throughout the years, you know, sometimes you feel like, 8 yeah, it could have been her too, you know, I mean, just 9 throughout the -- the years, throughout the years. 10 I didn't form it right away that, "Hey, it's 11 possibly her." Yeah, at first you think they did it to 12 her, you know, but then you -- as time goes by and 13 seeing people's reactions and talks and -- and then 14 nothing is out there to where, "Hey, yeah, you know 15 what? This guy pretty much looks like she (sic) did 16 it," or, you know, "She looks pretty" -- you know, you 17 start forming -- forming -- forming things on yourself, 18 you know, throughout the years. And, yeah, it could 19 have been her. It could -- you know, it could have been 20 anybody. 21 Q. (BY MR. AHMAD) Did Firefighter Draycott return 22 to Station 54? Do you know? 23 A. On -- on the A -- well, yeah, she returned back 24 to work after all that. 25 Q. How do you know that?</p>
<p style="text-align: right;">Page 94</p> <p>1 A. It could have been anybody. 2 Q. Okay. 3 A. Anybody. You know, I mean, I've heard they were 4 trying to get the exterminator to -- I mean, there's 5 people coming in and out of the fire stations. I don't 6 know what happened on the A Shift, on her shift. I 7 mean, it was just -- it could have been anybody. 8 Q. You did not witness who did it? 9 A. No. 10 Q. Do you think Firefighter Draycott did it? 11 A. Like I said, I don't know who did it. 12 Q. I understand. 13 A. It could have been anybody. I mean, I -- 14 Q. I understand. 15 A. It could have been -- it could have been her. It 16 could have been, like I said, the firefighters. It 17 could have been someone from the outside. I have no 18 idea. Apparently they haven't told us anything. 19 Q. So you think it could have been Firefighter 20 Draycott? 21 A. It could have been anybody. 22 Q. Why would Firefighter Draycott have done that? 23 MS. SULLIVAN: Objection, calls for 24 speculation. Go ahead and answer. 25 A. Well, like I said, I -- I mean, after all these</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Okay. Well, let's -- let's -- let's go back a 2 little bit. I think she was supposed to come back. 3 Yeah, she was supposed to come back apparently. Yeah, 4 they had that -- a welcome back meeting or -- with 5 A Shift, and I believe -- I think after that she ended 6 up leaving, and I don't think she never did return back, 7 yeah, if I'm -- to work after. 8 Q. Were you -- 9 A. I don't remember. 10 Q. Were you present for the meeting when she -- 11 A. No. 12 Q. Okay. Do you know why? 13 A. Because it was on the A Shift. They did the 14 meeting on the A Shift. She was going to return back on 15 the A Shift. That was her shift. 16 Q. All right. Take a look at Exhibit 3. 17 A. Okay. Page 3? 18 Q. Yeah, it's on the second page. On the bottom 19 right, it should say 6170. 20 A. Okay. 21 Q. All right. There's a question with a fairly long 22 answer right in the middle of the page asking if you 23 have knowledge of any male firefighter being in the 24 women's restroom. Do you see that? 25 A. Yes.</p>

Page 97	Page 99
<p>1 Q. Okay. And I want to just go through your answer.</p> <p>2 I will read most of it, and then I've got a couple of</p> <p>3 questions for you. And so you state that, "I believe it</p> <p>4 was two to three years ago firefighters used to go into</p> <p>5 the women's dorm to study, but then the female</p> <p>6 firefighters began to complain that the male</p> <p>7 firefighters were using the dorm. I believe Firefighter</p> <p>8 Nefertaria (sic) Alexander brought to my attention one</p> <p>9 time when she was filling in at Station 54 from Station</p> <p>10 92. She told me that the male firefighters were using</p> <p>11 the dorm by leaving things around like cups and plates.</p> <p>12 I talked to Captain Wurst about it and I addressed it to</p> <p>13 my subordinates. There were no other complaints until</p> <p>14 Ms. Draycott was transferred to Fire Station 54 and her</p> <p>15 complaints were more frequent about the restroom and</p> <p>16 dorm that I am aware of."</p> <p>17 So the first question I have is when you say that</p> <p>18 there were no other complaints until Ms. Draycott was</p> <p>19 transferred, what -- how much time are we talking about</p> <p>20 there, the period of time that there were no complaints?</p> <p>21 A. I don't remember.</p> <p>22 Q. Okay.</p> <p>23 A. Yeah. I don't remember.</p> <p>24 Q. Fair enough. "At some point there was a memo</p> <p>25 issued by Chief McAteer stating that male firefighters</p>	<p>1 MS. SULLIVAN: Objection -- hold on just one</p> <p>2 second. Objection, asked and answered. Go ahead and</p> <p>3 answer.</p> <p>4 A. Thinking about the males, not the --</p> <p>5 Q. (BY MR. AHMAD) Yes.</p> <p>6 A. Like I -- like I said, I know -- I know that when</p> <p>7 the bulletin was put out -- I don't know if it was</p> <p>8 before or after Draycott -- nobody was allowed to go in</p> <p>9 there. Now, at that time I don't remember if -- if</p> <p>10 they're still -- nobody was to go in there, but I know</p> <p>11 after that meeting that -- I mean, the incident, I</p> <p>12 believe, yeah, I think that's when it was put out, the</p> <p>13 bulletin, where no one was supposed to go in there and</p> <p>14 that that was off limits.</p> <p>15 Now, like I said, I just -- I have a -- a hard</p> <p>16 time remembering that -- you know, at that meeting.</p> <p>17 Because like I said, either it was just, "Hey, if you're</p> <p>18 going to go in there, pick the stuff up. Clean it up,"</p> <p>19 you know, or it was, "No, you know, don't" -- "don't use</p> <p>20 it anymore." I just don't remember, but I know when</p> <p>21 that -- that bulletin -- that order came out, yeah, that</p> <p>22 was off limits. And I think that's when we started</p> <p>23 doing the inspections.</p> <p>24 Q. Okay. If you could turn a couple of more pages.</p> <p>25 At the bottom right, it says 6172. The second question</p>
Page 98	Page 100
<p>1 to stay out of the women" -- "out of the restroom and</p> <p>2 dorm dedicated to female firefighters. The matter was</p> <p>3 addressed by Captain Wurst to the subordinates."</p> <p>4 Okay. So that time you state that the matter was</p> <p>5 addressed by Captain Wurst to the subordinates. Earlier</p> <p>6 in the answer on another incident you state that you</p> <p>7 addressed it to the subordinates. Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm just wondering what the difference was,</p> <p>10 why you addressed it with the subordinates on one</p> <p>11 occasion and Captain Wurst addressed it on the other</p> <p>12 occasion?</p> <p>13 A. Well, I'm just saying we have a roll call, and</p> <p>14 we're both in the roll call. I'm assuming it's that day</p> <p>15 that we're -- you know, he's talking to the</p> <p>16 subordinates, and then I come in and say, you know, what</p> <p>17 I need to say. I think that's -- that's what I'm</p> <p>18 meaning.</p> <p>19 Q. Okay.</p> <p>20 A. Yes, we're in the -- you know, that morning roll</p> <p>21 call, and so we're just addressing it to the -- to --</p> <p>22 Q. When you were addressing it, did you make it very</p> <p>23 clear that the male firefighters were not supposed to go</p> <p>24 in the women's dorm and women's restroom?</p> <p>25 A. The female --</p>	<p>1 on the page states, "Were you aware of Ms. Draycott's</p> <p>2 concerns as described in her statement and were these</p> <p>3 concerns addressed to your subordinates and other shift</p> <p>4 Captains prior to Ms. Draycott's filing a complaint?"</p> <p>5 And you state that, "Yes, these incidents were already</p> <p>6 being addressed prior to her transfer to Station 54."</p> <p>7 And so I don't -- I don't understand that. Can</p> <p>8 you tell me what was being addressed before Firefighter</p> <p>9 Draycott transferred to Station 54?</p> <p>10 MS. SULLIVAN: Objection, confusing, vague.</p> <p>11 Do we have her statement? Do you know?</p> <p>12 MR. AHMAD: I'm sorry?</p> <p>13 MS. SULLIVAN: Because I think the question</p> <p>14 is in reference to her statement. Do we have --</p> <p>15 MR. AHMAD: Well, I'm just asking -- I'm</p> <p>16 just asking what was being addressed prior to her</p> <p>17 transfer to Station 54.</p> <p>18 Q. (BY MR. AHMAD) Can -- can you tell me what was</p> <p>19 being addressed before Firefighter Draycott transferred?</p> <p>20 A. Well, I -- I'm assuming it's over using the --</p> <p>21 the -- the dorms, the restrooms, females.</p> <p>22 Q. So that had been an ongoing issue?</p> <p>23 MS. SULLIVAN: Objection, mischaracterizes</p> <p>24 the testimony. Go ahead and answer.</p> <p>25 A. Like I said, you have sometimes females filling</p>

<p style="text-align: right;">Page 101</p> <p>1 in, and that's offhand. Once females come in filling in</p> <p>2 and -- you know, yeah, you don't go in there. You</p> <p>3 don't -- you don't use the rest -- I mean, the -- the</p> <p>4 dorms. That's what I'm --</p> <p>5 Q. (BY MR. AHMAD) But my point is: It was an</p> <p>6 ongoing issue at Station 54 before Firefighter Draycott</p> <p>7 transferred there, correct?</p> <p>8 MS. SULLIVAN: Objection, mischaracterizes</p> <p>9 testimony. Go ahead and answer.</p> <p>10 A. Like I said, Draycott -- Alexander brought that</p> <p>11 complaint to me. That's the only time that I remember</p> <p>12 that there was a complaint. Now, there could have been</p> <p>13 complaints to the captains. Like I said, there -- in</p> <p>14 the chain of command, that's where they go first, to the</p> <p>15 captain, not to me. I mean, it was just that specific</p> <p>16 Alexander complaining to me. I mean, there's other</p> <p>17 females that had been there, and I've -- nobody had come</p> <p>18 up to me, unless they went to the junior captain.</p> <p>19 Q. (BY MR. AHMAD) Let me ask it a different way.</p> <p>20 A. Okay.</p> <p>21 Q. Some of the things that Firefighter Draycott</p> <p>22 complained about after she transferred to Station 54,</p> <p>23 those were already being addressed before Firefighter</p> <p>24 Draycott -- some of those same things were being</p> <p>25 addressed before Firefighter Draycott transferred --</p>	<p style="text-align: right;">Page 103</p> <p>1 listed in Ms. Draycott's statement?</p> <p>2 A. No --</p> <p>3 Q. Okay.</p> <p>4 A. -- incidents -- incidents. Oh, did she complain</p> <p>5 about --</p> <p>6 Q. It says -- it says here, looking at --</p> <p>7 A. Okay.</p> <p>8 Q. -- the second question -- your response to the</p> <p>9 second question --</p> <p>10 A. Okay.</p> <p>11 Q. -- "Yes, these incidents were already being</p> <p>12 addressed prior to her transfer to station 54." And my</p> <p>13 question is: Do you know what incidents were in the</p> <p>14 statement as you sit here today?</p> <p>15 A. Before? I guess it's -- I'm referring to the</p> <p>16 Alexander, you know, that complaint or -- unless there</p> <p>17 was other complaints to Captain Wurst that he addressed,</p> <p>18 but to -- I'm talking about the incident that happened</p> <p>19 with me and Alexander, the complaint she made to me.</p> <p>20 Q. Okay.</p> <p>21 A. If I'm -- I'm a little confused with your</p> <p>22 question, but I'm -- I'm thinking that's what you're</p> <p>23 trying to ask --</p> <p>24 Q. Okay.</p> <p>25 A. -- before -- before incidents. And if there's an</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Okay.</p> <p>2 Q. -- correct?</p> <p>3 MS. SULLIVAN: Objection, mischaracterizes</p> <p>4 his testimony, calls for speculation. Go ahead and</p> <p>5 answer.</p> <p>6 Q. (BY MR. AHMAD) As you -- as you put in your</p> <p>7 affidavit in response to Question No. 2.</p> <p>8 A. Like I'm telling you, yeah, Alexander complained</p> <p>9 way before the incident happened.</p> <p>10 Q. Complained to you?</p> <p>11 A. Complained to me.</p> <p>12 Q. Okay.</p> <p>13 A. Yes, that was before the incident.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah, there was a complaint --</p> <p>16 Q. Sure.</p> <p>17 A. -- by her.</p> <p>18 MR. AHMAD: Okay. That's all I have. Pass</p> <p>19 the witness.</p> <p>20 EXAMINATION</p> <p>21 BY MS. SULLIVAN:</p> <p>22 Q. I have a few follow-up questions. Let's start</p> <p>23 with the questions regarding the incidents being already</p> <p>24 addressed, as detailed here in your -- your affidavit.</p> <p>25 As you sit here today, do you recall what incidents were</p>	<p style="text-align: right;">Page 104</p> <p>1 incident that I'm directly aware of, it would have been</p> <p>2 that with Alexander.</p> <p>3 Q. Okay. But as you sit here today, you -- do you</p> <p>4 recall what was in Ms. Draycott's complaint that's</p> <p>5 related to Investigation 09424?</p> <p>6 A. Her complaints?</p> <p>7 Q. Do you remember the actual complaint that you</p> <p>8 referred to in responding to these questions as you sit</p> <p>9 here today?</p> <p>10 A. I just remember answering the questions, but</p> <p>11 the -- the main complaint, it was over the incident of</p> <p>12 what happened.</p> <p>13 Q. Okay. That's your understanding of what</p> <p>14 Investigation 09424 is?</p> <p>15 A. I mean, this -- this -- this one right here, yes,</p> <p>16 if that's what you're -- I mean, it was -- I'm a little</p> <p>17 confused here. So I -- okay. This statement right here</p> <p>18 that I -- that I gave, it was -- what I answered was</p> <p>19 over, I mean, these questions.</p> <p>20 Q. Uh-huh.</p> <p>21 A. So what are you trying to --</p> <p>22 Q. Okay. That's --</p> <p>23 A. -- ask me? I mean, those are the questions over</p> <p>24 the complaints, right?</p> <p>25 Q. Okay.</p>

Page 105	Page 107
<p>1 A. Now, directly -- if you're telling me, I mean,</p> <p>2 direct details of her complaints, no, I don't know.</p> <p>3 Q. Okay. Give me one second.</p> <p>4 As a senior captain, you didn't regularly review</p> <p>5 Form 42s for the firefighters under your command. Is</p> <p>6 that correct?</p> <p>7 A. No. I mean, that question, I thought I answered</p> <p>8 it earlier. I mean, not indirectly -- directly reviewed</p> <p>9 them. I mean, I have been asked before, you know,</p> <p>10 through my career.</p> <p>11 Q. Well, let me back up --</p> <p>12 A. Yeah.</p> <p>13 Q. -- because I'm just asking you did you as a</p> <p>14 matter of practice regularly review the Form 42s other</p> <p>15 than the instances when someone specifically asked you</p> <p>16 to look at it?</p> <p>17 A. No.</p> <p>18 Q. Okay. So earlier -- and this is still on</p> <p>19 Form 42s -- you were asked generally about Form 42s.</p> <p>20 And I believe the question was along the line of</p> <p>21 discipline. Form 42s are not discipline, are they?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. I guess you could say some kind of, you know --</p> <p>25 Q. Form 42s for -- each firefighter has a Form 42,</p>	<p>1 Q. So a Form 42 is a form of counseling, as you have</p> <p>2 put it, right, sir?</p> <p>3 A. Well, yeah, it's coaching, you know, I guess you</p> <p>4 could say, you know.</p> <p>5 Q. And it -- and it documents counseling and</p> <p>6 disciplinary action?</p> <p>7 A. I guess you could say some kind of form of it,</p> <p>8 you know, just making them aware of what's -- what's</p> <p>9 going on.</p> <p>10 MR. AHMAD: That's all I have. Thank you.</p> <p>11 MS. SULLIVAN: Nothing further.</p> <p>12 MR. MONTEIRO: Thank you very much,</p> <p>13 Mr. Ponce.</p> <p>14 MR. RUIZ: Mr. Ponce, thank you, sir.</p> <p>15 THE VIDEOGRAPHER: 1:31 p.m., off record.</p> <p>16 (The deposition was concluded.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 106	Page 108
<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And the Form 42 would document absences --</p> <p>4 A. Yes.</p> <p>5 Q. -- correct?</p> <p>6 It would document vacation?</p> <p>7 A. Yes.</p> <p>8 Q. If somebody was injured?</p> <p>9 A. Yes.</p> <p>10 Q. And is it fair to say that it was also, pursuant</p> <p>11 to the department's policies, a way of just documenting</p> <p>12 that you had actually spoken to a firefighter about a</p> <p>13 concern?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so it's not a suspension?</p> <p>16 A. No.</p> <p>17 Q. It's not a written reprimand?</p> <p>18 A. No.</p> <p>19 MS. SULLIVAN: I don't have anything further</p> <p>20 at this time.</p> <p>21 THE WITNESS: It's like counseling, you</p> <p>22 know, counseling.</p> <p>23 MR. MONTEIRO: No -- no further questions.</p> <p>24 FURTHER EXAMINATION</p> <p>25 BY MR. AHMAD:</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 JOSE PONCE DECEMBER 11, 2018</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

Page 109

1 I, JOSE PONCE, have read the foregoing deposition and
2 hereby affix my signature that same is true and correct,
3 except as noted above.

4

5

6

7 JOSE PONCE

8 THE STATE OF TEXAS

9 COUNTY OF)

10

11 Before me, _____, on this day
12 personally appeared witness name, known to me (or proved
13 to me under oath or through _____)
14 (description of identity card or other document) to be
15 the person whose name is subscribed to the foregoing
16 instrument and acknowledged to me that they executed the
17 same for the purposes and consideration therein
18 expressed.

19 Given under my hand and seal of office this ____ day
20 of _____, ____.

21

22

23 ~~NOTARY PUBLIC IN AND FOR~~
24 ~~THE STATE OF _____~~

25

Page 110

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA,)

5 Plaintiff,) Civil Action No.
6 v.) 4:18-cv-00644

7

8 CITY OF HOUSTON,)

9 Defendant.)

10 JANE DRAYCOTT AND PAULA KEYES,)

11 Plaintiff-Intervenors,)

12 v.)

13 CITY OF HOUSTON,)

14 Defendant.)

15 REPORTER'S CERTIFICATION

16 DEPOSITION OF JOSE PONCE

17 DECEMBER 11, 2018

18 I, Julie Scarborough, Certified Shorthand
19 Reporter in and for the State of Texas, hereby certify
20 to the following:

21 That the witness, JOSE PONCE, was duly sworn by
22 the officer and that the transcript of the oral
23 deposition is a true record of the testimony given by
24 the witness;

25 That the original deposition was delivered

Page 111

1 to _____;

2 That a copy of this certificate was served
3 on all parties and/or the witness shown herein on

4 _____.

5 That the amount of time used by each party at
6 the deposition is as follows:

7 MR. MONTEIRO: 1 hour, 56 minutes

8 MR. AHMAD: 15 minutes

9 MS. SULLIVAN: 5 minutes

10 I further certify that pursuant to FRCP Rule

11 30(f)(1) that the signature of the deponent:

12 x was requested by the deponent or a party

13 before the completion of the deposition and that

14 signature is to be before any notary public and returned

15 within 30 days from date of receipt of the transcript.

16 If returned, the attached Changes and Signature
17 page contains any changes and the reasons therefor;

18 _____ was not requested by the deponent or a

19 party before the completion of the deposition.

20 I further certify that I am neither counsel for,

21 related to, nor employed by any of the parties or

22 attorneys in the action in which this proceeding was

23 taken, and further that I am not financially or

24 otherwise interested in the outcome of the action.

25 Certified to by me on this, the 27th day of

Page 112

1 December, 2018.

2

3

4

5 ~~JULIE A. SCARBOROUGH, Texas CSR 4909~~
6 ~~Expiration Date: 12-31-19~~
7 ~~Lexipass - Firm Registration No. 95~~
8 ~~13101 Northwest Freeway, Suite 210~~
9 ~~Houston, TX 77040~~
10 ~~281.469.5580~~

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